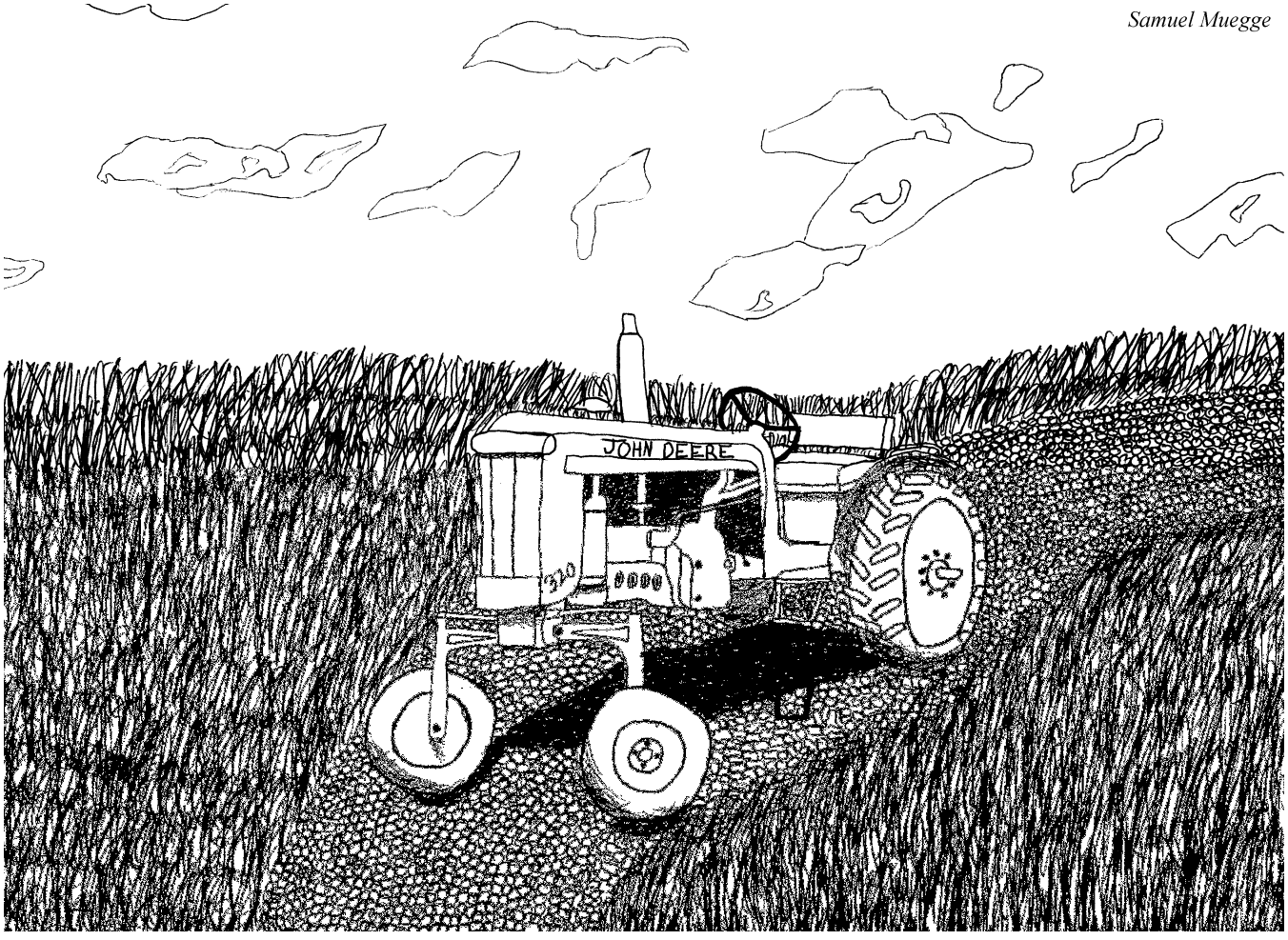
TEXAS REGISTER

Volume 31 Number 32 *August 11, 2006* *Pages 6287-6428*

Samuel Muegge



School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

Texas Register, **(ISSN 0362-4781, USPS 120-090),** is published weekly (52 times per year) for $211.00 ($311.00 for first class mail delivery) by LexisNexis Matthew Bender & Co., Inc., 1275 Broadway, Albany, N.Y. 12204-2694.

The ***Texas Register*** is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage Paid at Albany, N.Y. and at additional mailing offices.

POSTMASTER: Send address changes to the ***Texas Register,*** 136 Carlin Rd., Conklin, N.Y. 13748-1531.

a section of the
Office of the Secretary of State
P.O. Box 13824
Austin, TX 78711-3824
(800) 226-7199
(512) 463-5561
FAX (512) 463-5569
http://www.sos.state.tx.us
subadmin@sos.state.tx.us

Secretary of State –
Roger Williams

Director - Dan Procter

Staff
Ada Aulet
Leti Benavides
Dana Blanton
Belinda Bostick
Kris Hogan
Roberta Knight
Jill S. Ledbetter
Juanita Ledesma
Tamara Wah

IN THIS ISSUE

Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register*'s Internet site:
http://www.sos.state.tx.us/open/index.shtml

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 463-5561 in Austin. For out-of-town callers our toll-free number is 800-226-7199. Or request a copy by email: register@sos.state.tx.us

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.
http://www.oag.state.tx.us/opinopen/opengovt.shtml

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:
http://www.state.tx.us/

...

Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for July 31, 2006

Appointed to the Texas Department of Criminal Justice Advisory Committee on Offenders with Medical or Mental Impairments, pursuant to SB 591, 78th Legislature, Regular Session, for a term to expire February 1, 2011, Gabriel Holguin, Ph.D. of San Antonio.

Appointed to the Aerospace and Aviation Advisory Committee for a term at the pleasure of the Governor, Dennis Stuart of Boerne (replacing Leland Williams of San Antonio who resigned).

Appointed to the Aerospace and Aviation Advisory Committee for a term at the pleasure of the Governor, Michael L. Coats of Houston (replacing Jefferson Davis of Houston who resigned).

Appointed as Presiding Officer of the Alamo Regional Mobility Authority for a term to expire February 1, 2008, William E. Thornton, D.D.S. of San Antonio. Dr. Thornton is being reappointed. His original term was adjusted to expire February 1, 2006 pursuant to the failure of the constitutional amendment allowing 6-year terms for members of Regional Mobility Authorities.

Appointed to the Texas State Board of Public Accountancy for a term to expire January 31, 2007, Evelyn M. Martinez of San Antonio (replacing Carlos Madrid of San Antonio who resigned).

Appointed to the State Board of Professional Engineers for a term to expire September 26, 2011, Edward L. Summers of Austin (replacing Vicki Ravenburg of San Antonio whose term expired).

Appointed to the Central Texas Regional Review Committee for a term to expire January 1, 2008, Cynthia Grubb Keller of Gatesville (replacing Darren Moore).

Appointed to the Concho Valley Regional Review Committee for a term to expire January 1, 2008, Patrick O. Reardon of Mason (replacing Charles Reichenan).

Appointed to the Concho Valley Regional Review Committee for a term to expire January 1, 2008, Randy Young of Brady (replacing Matthew Mills).

Appointed to the Panhandle Regional Review Committee for a term to expire January 1, 2008, Jon Behrens of Canyon (replacing Lois Rice).

Appointed to the Panhandle Regional Review Committee for a term to expire January 1, 2008, Brian P. Gillispie of Spearman (replacing Rebecca Jackson).

Appointed to the South Plains Regional Review Committee for a term to expire January 1, 2008, Clinton Sawyer of Amherst (replacing Marilyn Cox).

Rick Perry, Governor

TRD-200604000

♦ ♦ ♦

THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following: Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from the Attorney General's Internet site http://www.oag.state.tx.us. Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: http://www.oag.state.tx.us/opinopen/opinhome.shtml.)

Request for Opinions

RQ-0509-GA

Requestor:

The Honorable Rodney Ellis

Chair, Committee on Government Organization

Texas State Senate

Post Office Box 12068

Austin, Texas 78711

Re: Whether a school district may delegate the purchase of food products and supplies to a food service management company (Request No. 0509-GA)

Briefs requested by August 24, 2006

RQ-0510-GA

Requestor:

The Honorable Laura Garza Jimenez

Nueces County Attorney

Nueces County Courthouse

901 Leopard, Room 207

Corpus Christi, Texas 78401-3680

Re: Authority of a county attorney to represent the Texas Department of Aging and Disability Services, in prosecuting an application for placement under chapter 593, Health and Safety Code (Request No. 0510-GA)

Briefs requested by August 28, 2006

RQ-0511-GA

Requestor:

The Honorable Mark E. Price

San Jacinto County Criminal District Attorney

1 State Highway 150, Room 21

Coldspring, Texas 77331-0430

Re: Confidentiality of sales figures collected from property owners and included in the appraisal of land purchased for expansion of a county jail (Request No. 0511-GA)

Briefs requested by August 28, 2006

RQ-0512-GA

Requestor:

The Honorable Roy DeFriend

Limestone County and District Attorney

Limestone County Courthouse

200 West State Street, Suite 110

Groesbeck, Texas 76642

Re: Whether a licensed bail bondsman in a Texas county may make a bond to release a person from confinement in another state (Request No. 0512-GA)

Briefs requested by August 28, 2006

RQ-0513-GA

Requestor:

The Honorable Jane Nelson

Chair, Committee on Health and Human Services

Texas State Senate

Post Office Box 12068

Austin, Texas 78711

Re: Whether the requirements of section 265.004, Family Code, apply to all prevention and early intervention programs funded by the Department of Family and Protective Services (Request No. 0513-GA)

Briefs requested by August 29, 2006

RQ-0514-GA

Requestor:

The Honorable Ed Walton

Kaufman County Criminal District Attorney

100 West Mulberry

Kaufman, Texas 75142

Re: Circumstances under which a county may opt out of an agreement made under chapter 312, Tax Code, the Property Redevelopment and Tax Abatement Act (Request No. 0514-GA)

Briefs requested by August 29, 2006

RQ-0515-GA

Requestor:

The Honorable Ismael "Kino" Flores

Chair, Committee on Licensing and Administrative Procedures

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether the Department of Housing and Community Affairs, in ranking housing development applications, is required to include as a factor quantifiable community participation with regard to the housing development, evaluated on the basis of written statements from neighborhood organizations (Request No. 0515-GA)

Briefs requested by August 31, 2006

For further information, please access the website at www.oag.state.tx.us, or call the Opinion Committee at (512) 463-2110.

TRD-200603999

Stacey Schiff

Deputy Attorney General

Office of the Attorney General

Filed: August 1, 2006

♦ ♦ ♦

PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 19. QUARANTINES AND NOXIOUS PLANTS

SUBCHAPTER R. FORMOSAN TERMITE QUARANTINE

4 TAC §19.181

The Texas Department of Agriculture (the department) proposes an amendment to §19.181, concerning a quarantine for the Formosan subterranean termite, *Coptotermes formosanus* Shiraki. The amendment is made to add Anderson and Johnson counties to the list of subterranean termite-infested counties in Texas. The amendment is proposed to slow the spread of this pest in the State. The Texas A & M University has informed the department that the subterranean termite infestations were recently detected in Anderson and Johnson counties since publication of the list of the 23 termite-infested counties in the November 18, 2005, issue of the *Texas Register*. The department believes that restriction on the movement of quarantined articles from these two counties would delay the spread of this termite into free areas of Texas. The amendment to §19.181 adds Anderson and Johnson counties to the list of the Formosan subterranean termite-infested counties in Texas.

Dr. Shashank Nilakhe, State Entomologist, has determined that for the first five-year period the amendment is in effect, there will be no fiscal implication for state or local government as a result of enforcing or administering the amended section, as proposed.

Dr. Nilakhe has also determined that for each of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the amended section will be reduction in the spread of this termite due to manmade activities. There will be a treatment cost to small and/or micro-businesses that move quarantined articles from the amended quarantined counties to free area. In order to comply with the amended section, businesses located in the amended counties may be required to treat quarantined articles by fumigation or another means prescribed by the department. The cost of treatment will depend on the volume of quarantined articles moved from infested counties to non-infested counties and the method of treatment prescribed. Consequently, the specific cost to the impacted businesses cannot be determined at this time.

Comments on the proposal may be submitted to Dr. Shashank Nilakhe, State Entomologist, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendment is proposed under the Texas Agriculture Code (the Code) §71.002, which provides the department with the authority to quarantine an area if it determines that a dangerous insect pest or plant disease not widely distributed in this state exists within an area of the state; the Code, §71.003, which provides the department with the authority to declare an area pest-free and quarantine surrounding areas if it determines that an insect pest or plant disease of general distribution in this state does not exist in an area; and the Code, §71.007, which authorizes the department to adopt rules as necessary to protect agricultural and horticultural interests, including rules to provide for a specific treatment of quarantined articles.

The Code affected by the proposal is the Texas Agriculture Code, Chapter 71.

§19.181. Quarantined Areas.

The quarantined areas are:

(1) - (9) (No change).

(10) Texas counties: Anderson, Angelina, Aransas, Bexar, Brazoria, Cameron, Collin, Colorado, Dallas, Denton, Galveston, Gregg, Henderson, Hidalgo, Harris, Jefferson, Johnson, Liberty, Nueces, Orange, Polk, Rockwall, Smith, Tarrant, and Travis.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 28, 2006.

TRD-200603980
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: September 10, 2006
For further information, please call: (512) 463-4075

♦ ♦ ♦

TITLE 10. COMMUNITY DEVELOPMENT

PART 7. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION

CHAPTER 303. REGISTRATION

SUBCHAPTER E. TEXAS STAR BUILDER PROGRAM

10 TAC §303.300

The Texas Residential Construction Commission proposes for comment amendments to 10 TAC §303.300, which sets forth the requirements for qualification for the Texas Star Builder Program. The amendments are, in part, the result of a petition for rulemaking filed by the Houston Center for Independent Living (HCIL). Commission rule 10 TAC §301.2 requires the commission to publish notice of a petition for rulemaking in the *Texas Register*. The HCIL petition was published on March 3, 2006 (31 TexReg 1524) and can be viewed at the agency website, www.trcc.state.tx.us. The proposed amendments add a new definition and new §303.300(f)(8) to the list of acceptable construction practices with which an applicant must comply to maintain Texas Star Builder status.

In addition, the amendments change the term of membership to match the two-year term registration requirements for builder registration adopted by the commission in February 2006 because Property Code §416.011(d) provides that the certification issued by the commission for a "Texas Star Builder" shall be for the same period of time as the builder's registration. Also, because of the change of builder registration from annual to biennial, amendments are proposed to clarify that the annual continuing education requirements for Texas Star Builder membership are separate from the renewal requirements.

Another amendment is proposed because the Texas Veterans Land Board no longer has a green building program.

Stephen A. Hester Jr., on behalf of the Houston Center for Independent Living (HCIL), submitted a petition for adoption of an amendment to the Texas Star Builder rule. The HCIL's stated justification is to require Texas Star Builders to serve all citizens, including those with disabilities.

The petition seeks to amend the rule to add a new section regarding barrier-free construction practices. The proposal would require a builder, when registering with the commission, to provide a sworn statement that the applicant constructed 8% of homes built during the previous year in compliance with a list of minimum requirements relating to: exterior doors; interior doorways and hallways; reinforced bathroom walls, tubs and showers; and maximum height restrictions for switches, boxes and thermostats.

The petition would permit a builder to apply for an exterior disability accessibility waiver if compliance is cost prohibitive (as determined by the builder or an architect).

The petition would require a builder to provide a list of "Universal Design Options" and cost estimations for incorporating an option as prescribed by the commission to potential homeowners 3 days prior to execution of a contract sale. The petition would exempt a builder who has more than 20% of homes built in compliance with the minimal standards from this section.

The commission received comments to the proposed petition for rulemaking from the Texas Association of Builders (TAB). TAB suggested that the rule be amended to add a builder's willingness (or ability) to build a given percentage or given number of houses that contain the additional accessibility features to the construction practices contained in §303.300(f) to encourage builders to build these kind of homes, without mandating that they do so. The amendment would encourage accessibility in buildings while keeping the program open to all builders.

The commission has reviewed the petition and related comments and has incorporated the responses into a new §303.300(f)(8), which incorporated the 8% construction commitment into one of the three qualifying events needed to receive the award of the Texas Star Builder designation.

The commission believes this amendment will enable builders to participate within a range of options and preserve the right of the individual to negotiate a contract for their home for the specific accessibility needs of the homeowner, and not create a boilerplate of features that may not be necessary or desired.

Susan Durso, General Counsel for the commission, has determined that for each year of the first five-year period that the proposed amendments are in effect there will be no increase in expenditures or revenue for state government and no fiscal impact for local government as a result of enforcing or administering the amended section.

Ms. Durso has also determined that for each year of the first five-year period the proposed amendments are in effect the public will benefit from having a broader range of selection criteria for builders/remodelers to utilize when applying to the program and from the clarification of the rule.

Ms. Durso has also determined that for each year of the first five-year period that the amendments are in effect there will not be an effect on individuals, or large, small or micro businesses. Further, there is no anticipated economic cost to persons who are required to comply with the proposed amendments.

Ms. Durso has also determined that for each year of the first five-year period the proposed amendments are in effect there should be no effect on a local economy; therefore, no local employment impact statement is required under the Administrative Procedure Act, §2001.022.

Interested persons may send written comments regarding these proposed amendments to the Texas Residential Construction Commission, P.O. Box 13144, Austin, Texas 78711-3144. Comments regarding these amendments will be accepted for 30 days following the date of publication in the *Texas Register*. Thereafter, the comments will not be considered as timely filed. Comments may also be submitted electronically to comments@trcc.state.tx.us. For comments submitted electronically, please include "303 amendments" in the subject line. Comments submitted electronically that do not include "303 amendments" in the subject line may not be considered.

The amendments are proposed pursuant to Property Code §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16, Property Code and Property Code §416.011.

No other statutes or codes are affected by the amendments.

§303.300. Texas Star Builder Program.

(a) Purpose. The Texas Star Builder Program is a voluntary program for builders and remodelers that are [~~have been~~] registered and are in good standing under Subchapter A of this chapter for a period of twelve months immediately preceding their application to the program. Participation in this program is not required to be a builder or remodeler in the State of Texas.

(b) Definitions. The following words and terms, when used in this section shall have the following meanings, unless the context clearly indicates otherwise:

(1) - (3) (No change.)

(4) Foundation Practices--

(A) Foundations are designed by a structural engineer based on a site specific geotechnical report as may be required by the engineer of record; [~~and~~]

(B) The site specific geotechnical report is one that is appropriate for the circumstances with the frequency and spacing of the borings determined by the geotechnical engineer; [~~and~~]

(C) Foundations are built as designed; [~~and~~]

(D) The construction of the foundation system is inspected prior to the placement of the concrete by the engineer or an employee of the engineer who issues an inspection report; [~~and~~]

(E) If the foundation system is designed for post-tension cables, then the builder shall maintain a record of the stressing certification; [~~and~~]

(F) The builder makes a record of the elevations of the foundation prior to substantial completion of the home or an improvement to the home; [~~and~~]

(G) (No change.)

(H) The builder who constructs the major structural components of a single-family dwelling or duplex or a material improvement, for a period of ten years following the date of substantial completion, shall maintain:

(i) - (iv) (No change.)

(5) Member--A person registered as a builder or remodeler or designated agent of a builder or remodeler by the commission who has been approved by the commission for admission into the Texas Star Builder program.

(6) Program Year--Beginning July 1, 2006, the twelve months from July 1 to June 30 each year will constitute a Program Year for the Texas Star Builder Program.

(7) [~~(6)~~] Responsible Party--An individual who is authorized to act on behalf of a business entity that is a registered builder or remodeler in transactions involving amounts in excess of $100,000, excluding execution of contracts or instruments of conveyance for the sale of a single lot or dwelling unit, or the acquisition of materials for construction thereof.

(8) [~~(7)~~] SIRP--The State-sponsored Inspection and Dispute Resolution Process.

(9) Universal Design Options--Features in residential construction that provide barrier-free access and easy mobility and independence for people with a broad variety of physical needs including all of the following: barrier-free construction of exterior doors; interior doorways and hallways; reinforced bathroom walls, tubs and showers; and maximum height restrictions for switches, boxes and thermostats.

(c) Eligibility.

(1) An applicant who is a sole proprietor [~~not a business entity~~] must satisfy one of the following:

(A) (No change.)

(B) seven years of experience immediately preceding the application acting as a builder or remodeler of single family dwellings or duplexes in the State of Texas, is an active builder member of and with [~~has had~~] continuous membership in a trade association related to the construction industry for at least five years preceding the date of the application; or

(C) - (D) (No change.)

(2) An applicant that is a business entity, which registered 40 homes or less in the preceding twelve months, must have at least one responsible party of the applicant who satisfies one of the following:

(A) (No change.)

(B) seven years of experience immediately preceding the application acting as a builder or remodeler of single family dwellings or duplexes in the State of Texas, is an active builder member of and with [~~has had~~] continuous membership in a trade association related to the construction industry for at least five years preceding the date of the application; or

(C) - (D) (No change.)

(3) An applicant that is a business entity, which registered more than 40 homes in the preceding twelve months, must have at least one responsible party of the applicant and one [~~an~~] employee of the applicant who is involved in on-site construction activities for each 40 homes registered in the preceding twelve months who each satisfy one of the following:

(A) (No change.)

(B) seven years of experience immediately preceding the application acting as a builder or remodeler of single family dwellings or duplexes in the State of Texas, is an active builder member of and with [~~has had~~] continuous membership in a trade association related to the construction industry for at least five years preceding the date of the application; or

(C) five years of experience immediately preceding the application acting as a builder or remodeler of single family dwellings or duplexes in the State of Texas and [~~each~~] holds a four-year degree in construction science or its equivalent from an accredited college or university; or

(D) three years of experience immediately preceding the application acting as a builder or remodeler of single family dwellings or duplexes in the State of Texas and [~~each~~] has credible documentation of completion of educational requirements administered by an association or institution that designates a level of expertise in the residential construction industry, such as the National Association of Home Builders Graduate Builder and Remodeler Programs.

(d) Financial Responsibility. An applicant must:

(1) provide documentation from a financial institution that includes a statement of the following information that at the time of the application:

(A) - (D) (No change.)

(E) The officer or official of the financial institution that executes the document does not have actual knowledge that the applicant has overdrafts or past due notices that have not been brought current in a timely manner within the standards of the lending[~~/banking~~] industry; and

(F) The officer or official of the financial institution that executes the document does not have actual knowledge of any current delinquency in property taxes, unsatisfied judgments or enforceable mechanic's or [~~and~~] materialmen's liens on any property for which applicant entered into a transaction governed by the Act as a result of failure to pay a subcontractor or supplier unless the builder has either:

(i) - (iii) (No change.)

(2) provide a sworn or attested statement of the applicant that:

(A) - (C) (No change.)

(D) the applicant has no enforceable mechanic's or [and] materialmen's liens on any property for which the applicant entered into a transaction governed by the Act as a result of failure to pay a subcontractor or supplier unless the builder has either:

(i) - (iii) (No change.)

(3) - (4) (No change.)

(e) Insurance requirements.

(1) A remodeler-applicant must maintain a general liability policy of:

(A) (No change.)

(B) $500,000 per occurrence, if the applicant registered between 76 - 125 [75 - 125] homes in the preceding twelve months; or

(C) (No change.)

(2) A remodeler-applicant who has registered fewer than 25 homes in the preceding twelve months does not need to comply with the general liability insurance requirements of this section.[;]

(3) - (4) (No change.)

(f) Construction Practices. The applicant must provide a sworn or attested statement that the applicant shall comply during the term of membership with the requirements of at least three of the following:

(1) a green building program such as the Model Green Home Building Guidelines sponsored by [the Green Building Program sponsored by the Texas Veterans Land Board or] the National Association of Home Builders, [or any successor entities,] any local governmental authority or similar publicly or privately sponsored programs as approved by the Executive Director;

(2) (No change.)

(3) Certified Aging-in-Place [place] Specialist Program or EasyLiving Home Certification Program;

(4) a private inspection program for at least [lease] three (3) phases of construction for all homes built in a geographic area that are not inspected by municipal inspectors; or

(5) - (6) (No change.)

(7) provide [Provide] homeowners with whom it enters into a transaction governed by the Act with a third-party warranty program offered by a commission-approved third-party warranty company or provide those homeowners with a two-year warranty for all one-year workmanship and materials items pursuant to the building and performance standards set forth in Chapter 304, Subchapter B of this title; or [.]

(8) affirm that 8% of homes constructed annually were built in accordance with Universal Design Options as defined in this section.

(g) Participation. Applicants must agree to actively participate in any eligible SIRP request submitted by a homeowner involving a residential construction project for which the applicant was the builder or remodeler and must agree to respond to the homeowner in good faith based on the final non-appealable SIRP report and recommendation.

(h) (No change.)

(i) Application. Applicants must submit a completed commission-prescribed application form and credible documentation supporting the information supplied in the application for each applicant seeking membership or renewal in the Texas Star Builder Program.

(1) An applicant may submit an application for membership in the Texas Star Builder Program only once during a Program Year [any calendar year].

(2) (No change.)

(3) Applicants shall respond to inquiries from the commission for further information regarding an application for membership or renewal of membership. Failure to respond within 15 days to a request for information shall result in the administrative withdrawal of the application.

(4) (No change.)

[(5) Failure to submit all requested documentation within fifteen days of notice of an incomplete application will result in the administrative withdrawal of the application.]

(5) [(6)] A Texas Star Builder certificate of membership shall be [remain] effective for a two-year term of membership to expire at the end of the second Program Year of membership [one year] from the date of issuance unless revoked, without proration for any portion of a Program Year in which the membership is not yet approved.

(j) Continuing education. Beginning July 1 [January 1], 2006, all members shall complete at least 16 hours of continuing education per Program Year [year]. A [member may not submit for credit] continuing education course with the same course content as [one] previously submitted for credit cannot be repeated for credit [by the same member].

(1) For purposes of this requirement:

(A) (No change.)

(B) any member that is a business entity[,] that registered fewer than 40 homes in the preceding twelve months[,] shall require at least one officer of the member to maintain the continuing education requirement; or

(C) (No change.)

(D) Beginning July 1, 2006 [January 1, 2007], and each Program Year thereafter, members must submit evidence no later than June 30 of each Program Year that they have completed [of completion of] the continuing education requirements of this section during the preceding 12 months. Proof of continuing education must be submitted to the commission with a completed Texas Star Builder continuing education form and processing fee [must be submitted with each renewal application].

(E) Approved Continuing Education Courses or Programs.

(i) The Executive Director shall [annually] review all courses or programs submitted and shall approve those that [sufficient to] satisfy the continuing education requirement. The Executive Director shall consider in the approval process of a proposed training program, the objective and purpose of the program, the content and subject matter of each course and the qualifications of the presenters.

[(ii) Any member that registers more than 30 homes per year who wishes to conduct an in-house training program for its employees in order to satisfy the continuing education requirement of this section may submit course materials to the Executive Director for approval. The Executive Director shall consider in the approval process of a proposed in-house training program, the objective and purpose of the program, the content and subject matter of each course and the qualifications of the presenters.]

(ii) [(iii)] Any member that registers more than 30 homes per year that wished to conduct an in-house training program for

its employees or any person who wishes to sponsor a course or training program for continuing education purposes under this section must submit a written request for consideration, a detailed course agenda, a written course description and resume or biographical information of each speaker or presenter to the Executive Director for approval, not later than sixty (60) [~~thirty~~] days prior to the proposed event.

(2) Substitutions for Continuing Education Coursework.

(A) A member may substitute not more than three credit hours of continuing education per Program Year [~~membership year~~] for participation in an active leadership role (such as an officer or committee chairperson) in a trade association for the Program Year [~~membership year~~] in which the continuing education hours would have been taken. To receive this leadership credit, the member shall submit to the commission written verification from the president, executive officer, or other equivalent of the association, certifying the member's leadership status.

(B) A member may not substitute more than two credit hours of continuing education for self-study in a Program Year. To receive [~~this~~] self-study credit, the member must submit to the commission a statement that verifies the completion of self-study and the materials studied.

(C) A member may substitute instructor credit for up to five credit hours of continuing education in a Program Year. Each hour of instruction given is equivalent to an hour of continuing education credit. To receive [~~this~~] instructor credit, the member must submit to the commission a copy of the published course agenda.

(k) (No change.)

(l) Denial.

(1) - (2) (No change.)

(3) The commission shall state the reason(s) for denial of membership or renewed membership in the Texas Star Builder Program in its written notice to the applicant and provide an [~~notice of the~~] opportunity for appeal.

(m) (No change.)

(n) Revocation of Membership.

(1) The commission shall revoke a certificate of membership in the Texas Star Builder Program if the commission determines that:

(A) the member has been subject to a final disciplinary action from the commission pursuant to Chapter 418 [~~§418.001~~] of the Act;

(B) (No change.)

(C) the member is no longer eligible for a Certificate of Registration as a builder or remodeler or is no longer eligible to serve as a designated agent for a builder or remodeler; [~~or~~]

(D) the member's Certificate of Registration has been suspended, is placed in inactive status or the member has been placed under a commission probation order; or [~~.~~]

(E) the member has failed to maintain the program's continuing education requirements.

(2) - (4) (No change.)

(o) (No change.)

(p) Recognition of Membership. A member may display the Texas Star Builder logo [~~approved and submitted for trademark~~] so long as that member remains in good standing in [~~as a member of~~] the Texas Star Builder Program. Members who have had continuous membership in the Texas Star Builder Program may display the number of years of continuous membership.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 26, 2006.

TRD-200603948
Susan K. Durso
General Counsel
Texas Residential Construction Commission
Earliest possible date of adoption: September 10, 2006
For further information, please call: (512) 463-2886

CHAPTER 313. STATE-SPONSORED INSPECTION AND DISPUTE RESOLUTION PROCESS (SIRP)

10 TAC §313.13, §313.18

The Texas Residential Construction Commission proposes amendments to §313.13 and §313.18, which are different from the proposed amendments published in the March 10, 2006, issue of the *Texas Register* (31 TexReg 1558). The amendments published in the March 10, 2006, issue of the *Texas Register* are withdrawn.

Section 313.13 describes the third-party inspector's obligations to coordinate the date for the inspection with both parties and the parties' obligations to work cooperatively with the inspector to arrive at a mutually agreeable time and date for the inspection, as well as the third-party inspector's duties for the inspection report.

Section 313.13(e) permits a third-party inspector to suspend an inspection if a party makes it impossible for the inspector to conduct the inspection in an unbiased manner. The language is not new; however, staff has proposed a consequence in the event that the inspector is required to return to complete a suspended inspection. This proposal will require an amendment to §313.18, regarding orders for payment of inspection fees, discussed below.

Section 313.18 amendments make clear that, with one exception, the commission will reimburse a homeowner who pays a fee to initiate an SIRP if a final unappealable report issued by the commission affirms at least one alleged construction defect. The amendments create a mechanism by which a builder can appeal the order if the builder is able to show that he made an offer to make substantially the same repairs as recommended by the final unappealable report. It further clarifies the commission's delegation of authority to the Executive Director to order a builder to reimburse SIRP inspection fees if at least one alleged construction defect is affirmed. It also provides for an order for reimbursement of a second inspection fee if a party unduly interferes with an inspection under §313.13(e). If a homeowner or builder is the guilty party in causing an inspection to be suspended, the commission may order that person to pay the cost of the second inspection fee.

Other changes are proposed to streamline and provide clarity in the rule and to correct errors in the earlier published proposal.

Susan Durso, General Counsel for the commission, has determined that for each year of the first five-year period that the proposed sections are in effect there will be no increase in expenditures or revenue for state government and no fiscal impact for local government as a result of enforcing or administering the sections as proposed.

Ms. Durso has also determined that for each year of the first five-year period the proposed sections are in effect the public will benefit from a broader selection criteria to utilize when applying to the program and from the clarification of the rule. There will not be an effect on individuals, or large, small or micro businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Ms. Durso has also determined that for each year of the first five-year period the proposed sections are in effect there should be no effect on a local economy; therefore, no local employment impact statement is required under the Administrative Procedure Act, §2001.022.

Interested persons may send written comments regarding these proposed amendments to the Texas Residential Construction Commission, P.O. Box 13144, Austin, TX 78711-3144. Comments regarding these amendments will be accepted for thirty days following the date of publication in the *Texas Register*. Thereafter, the comments will not be considered as timely filed. Comments may also be submitted electronically to comments@trcc.state.tx.us. For comments submitted electronically, please include "313. 13 & 313.18 amendments" in the subject line. Comments submitted electronically without "313.13 & 313.18" in the subject line may not be considered.

The amendments are proposed pursuant to Property Code §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16, Property Code, Property Code Chapters 426 and 428 and, specifically, Property Code §426.004(d).

Cross references to sections: Property Code, Chapters 426 and 428, and §408.001 and §426.004(d).

§313.13. Home Inspection and the Third-Party Inspector's Report.

[~~(a) If the commission does not receive a timely written objection to the appointed third-party inspector, the commission shall contact the third-party inspector with information regarding the dispute, including the names of the interested parties and their counsel, if any. Unless the third-party inspector advises the commission of a conflict of interest with either of the parties to the dispute, the commission shall forward to the appointed third-party inspector a copy of the SIRP request and all documentation submitted with the request.~~]

(a) [~~(b)~~] As soon as practicable, but no later than two (2) business days after receipt of the SIRP request, the appointed third-party inspector shall contact the homeowner to ascertain several dates and times that are mutually convenient to conduct an inspection of the affected home. [~~arrange a mutually convenient time to inspect the affected home.~~] The third-party inspector shall then make reasonable attempts to contact the builder on business days during regular business hours to determine whether the builder or a representative is available to attend the inspection on one of the identified dates. If the builder affirms to the inspector that the builder would like to be present or to send a representative, the third-party inspector shall make reasonable efforts to work cooperatively with the builder and the homeowner to identify a mutually convenient date and time to conduct the inspection. If either party to the dispute fails to work cooperatively with the third-party inspector to arrange a time and date for the inspection, the third-party inspector shall notify the commission. Using the information provided by the third-party inspector regarding potential dates and times for the inspection, if any, the commission will resolve the matter for the parties by setting the date and time for the inspection [~~notify the builder and the homeowner of the date and time of the inspection~~].

(b) The homeowner and builder, including any of their consultants or representatives, may be present at the inspection.

(c) The third-party inspector shall gather all information and other data that the third-party inspector, in the inspector's sole professional judgment, deems relevant toconduct the inspection and write the inspection report and shall gather the information [~~it~~] by any reasonable means including taking photographs and measurements and interviewing the homeowner, the builder, and any consultants present, in order to document the alleged defects.

(d) A third-party inspector may conduct interviews at a later date or [~~An interview under this subsection may take place~~] outside the presence of others not aligned with the party subject to the interview, if the third-party inspector in the inspector's sole discretion deems it preferable for the orderly conduct of the inspection.

(e) [~~(d)~~] The third-party inspector may suspend the inspection if a party interferes with the inspection in such a manner as to prohibit the third-party inspector from performing the assigned duties in an impartial and professional manner. If the third-party inspector is required to suspend an inspection under this subsection, upon notice and hearing before SOAH, the commission may order the party who caused the suspension to reimburse the commission the costs of any second inspection fee required as provided in §313.18 of this chapter.

(f) [~~(e)~~] The third-party inspector shall not engage independently or employ the services of any testing company or any consultant.

(g) [~~(f)~~] Except as otherwise provided under §313.6(a)(9) of this chapter [~~§313.6(a)(8)~~], the builder shall submit to the third-party inspector any documentation or tangible things created or generated as a result of having received a notice of alleged construction defect(s) under §313.2 of this chapter for consideration in the third-party inspector's report to the commission.

(h) Either party may submit any information that the party wants considered by the third-party inspector in preparation of the inspection report to the inspector prior to the inspection or within a reasonable time after the inspection such that the inspector has an opportunity to review the information and timely submit the inspection report to the commission. A party that provides information to a third-party inspector shall also provide a copy of the information to the other party to the dispute and to the commission.

(i) If the alleged construction defect(s) described in the request do not include a structural matter, the third-party inspector shall submit a report with recommendations to the commission as soon as practicable after the inspection, but not later than the 12th day after the date the third-party inspector receives the SIRP request and materials submitted by the requestor from the commission, except as otherwise provided by this chapter.

(j) If the alleged construction defect(s) described in the request include a structural matter:

(1) the third-party inspector shall inspect the home as soon as practicable after receipt of the request from the commission, but not later than the 12th day after the date the third-party inspector receives the request and the requestor's submitted materials from the commission; and

(2) the third-party inspector shall submit a report after the inspection with recommendations to the commission as soon as practicable, but not later than the 45th day after the date the third-party inspector receives the request and materials submitted by the requestor from the commission, except as otherwise provided by this chapter.

(k) The third-party inspector's report shall:

(1) set forth the inspector's findings as to whether each alleged defect is in or out of compliance with the applicable warranty and building and performance standards;

(2) identify the warranty and building and performance standards upon which each finding is based; and,

(3) include one or more reasonable repair or remediation options to address any alleged construction defects found.

(l) A third-party inspector's report shall not include:

(1) a determination of liability or recommendation for payment of monetary damages;

(2) a price for any recommended repairs;

(3) comments regarding matters outside the scope of the SIRP or the third-party inspector's duties;

(4) a determination of the value of any loss allegedly suffered by the homeowner; or

(5) findings or recommendations for repair for alleged construction defects that are not listed in the SIRP or items that have been excluded by the commission as ineligible for inspection unless both the homeowner and builder agree in writing that the third-party inspector can include an inspection of those items in the report or unless the third-party inspector observes a construction defect that if left uncorrected immediately threatens the health and safety of the occupants.

§313.18. Order for Reimbursement of Fees and Costs.

(a) Upon issuance of a final unappealable report in which the [~~If the third-party inspector's~~] findings support all or a portion of the allegations of the requesting party and the requesting party is the homeowner, the Executive Director shall issue an order on behalf of the commission [~~the commission may order the other party~~] to reimburse the fees paid by the requestor and the costs of the inspection paid by the commission, except as otherwise provided in §313.13(e) of this chapter [~~all or part of the fees or costs of inspection paid by the requestor~~].

(1) A builder may appeal a notice of the order to reimburse fees and costs under this subsection.

(2) To appeal the notice of order to reimburse fees under this subsection, the builder must file written notice of its appeal with the commission. The commission will then set the appeal for a hearing with the SOAH. The hearing will be conducted pursuant to commission rules. In order to overcome the presumption that the builder must reimburse the commission for the cost of the inspection and fees paid by the requestor, the builder must demonstrate by credible documentation that, prior to the submission of the SIRP request to the commission, the builder made a written offer to the homeowner to repair, by the builder or a third-party, all of the affirmed construction defects in substantially the same manner as recommended in the commission's final unappealable report, and that the homeowner had notice of the offer, and that offer was not accepted by the homeowner.

(3) The notice of appeal must be received by the commission within ten calendar days of the date that the commission notices the builder of the obligation to reimburse the fees and costs under subsection (a) of this section.

(4) Notwithstanding a builder's successful appeal of an order to reimburse the commission for inspection fees issued under this subsection, the commission will reimburse the SIRP request fee to any homeowner who initiates a request and pays the appropriate fees under §313.5 of this chapter, if the final unappealable report issued by the commission affirms at least one alleged construction defect.

(b) If a third-party inspector finds it necessary to suspend an inspection under §313.13(e) of this chapter because a party interferes with the inspection in such a manner as to prohibit the third-party inspector from performing the assigned duties in an impartial and professional manner, then upon notice and hearing before SOAH, the commission may order the party who caused the suspension to reimburse the commission the costs of any second inspection fee required.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 28, 2006.

TRD-200603973
Susan K. Durso
General Counsel
Texas Residential Construction Commission
Earliest possible date of adoption: September 10, 2006
For further information, please call: (512) 463-2886

♦ ♦ ♦

TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 73. LICENSES AND RENEWALS

22 TAC §73.4

The Texas Board of Chiropractic Examiners (Board) proposes an amendment to §73.4(b), relating to Inactive Status, to delete the requirement of a processing fee for inactive licenses. This amendment is a companion to the adopted amendment to §75.7(a), relating to Required Fees and Charges. The companion amendment was adopted in the December 2, 2005, issue of the *Texas Register* (30 TexReg 8093). The Board has decided to no longer assess this fee.

Glenn Parker, Executive Director, has determined that for the first five-year period the amendment is in effect there will be no additional cost to state or local governments as a result of enforcing or administering the amended rule.

Mr. Parker also has determined that for each year of the first five-year period the amendment is in effect the public benefit will be reduced fees for inactive licenses.

Mr. Parker has determined that there will be no economic costs to persons who are required to comply with the proposed amendment. There will be no effect to small or micro businesses.

Comments on the proposed amendment may be submitted to Glenn Parker, Executive Director, Texas State Board of Chiropractic Examiners 333 Guadalupe Street, Tower III, Suite 825, Austin, Texas 78701, (512) 305-6705 fax, no later than 30 days from the date that the proposed amendment is published in the *Texas Register*.

The amendment is proposed under Texas Occupation Code §201.152, relating to Rules, and §201.153, relating to Fees. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic. Section 201.153 authorizes the Board to set fees by rule in amounts reasonable and necessary to cover the costs of administering the Chiropractic Act.

No other statutes, articles, or codes are affected by the proposed amendment.

§73.4. Inactive Status.

(a) (No change.)

(b) [~~A licensee on inactive status is required to pay a processing fee as required by §75.7 of this title if the application for inactive status is submitted on or before the annual expiration date of the license.~~] If the application is late, the licensee shall be subject to §73.2(d) of this title (relating to Expired License). A licensee on inactive status is not required to complete continuing education as provided in §73.3 of this title (relating to Continuing Education).

(c) - (f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 28, 2006.

TRD-200603960
Glenn Parker
Executive Director
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: September 10, 2006
For further information, please call: (512) 305-6901

♦ ♦ ♦

CHAPTER 75. RULES OF PRACTICE

22 TAC §75.17

The Texas Board of Chiropractic Examiners (Board) proposes amendments to §75.17, relating to scope of practice. The Board's 2005 Sunset Legislation, HB 972, 79th Legislature, Regular Session, mandated that the Board adopt rules regarding the scope of practice of chiropractic in Texas (Texas Occupation Code §201.1525). The Board published the proposed rule regarding scope of practice on December 16, 2005, in the *Texas Register* (30 TexReg 8383). The Board adopted the scope of practice rule at its meeting on May 11, 2006. As the result of public comments received on the proposed rule, the Board determined that additional definitions were needed to clarify terms used in the scope of practice rule and that a description of cosmetic therapies outside of the scope of practice should be included.

The Board now proposes to amend the scope of practice rule to include definitions for the following terms: incision, musculoskeletal system, and subluxation complex. These are terms used in the Texas Chiropractic Act and in the scope of practice rule. The Board compiled the proposed definitions after considering how the terms are used in the Chiropractic Act and based on definitions from medical dictionaries. The definition for "subluxation complex" is based on a definition previously included in the Board's rules.

Glenn Parker, Executive Director of the Texas Board of Chiropractic Examiners, has determined that for each year of the first five years that the amendments will be in effect there will be no additional cost to state or local governments.

Mr. Parker has also determined that for each year of the first five years that the amendments will be in effect the public benefit will be a clearer understanding and delineation of the scope of practice of chiropractic.

Mr. Parker has also determined that there will be no additional cost to licensed chiropractors and other persons during the first five years that the amended rule will be in effect, including small and micro businesses.

Comments on this proposed amendments may be submitted to Mary Feys, Texas Board of Chiropractic Examiners, 333 Guadalupe Street, Tower III, Suite 825, Austin, Texas 78701, facsimile (512) 305-6705, by the close of business 30 days from the date that the proposed amendments are published in the *Texas Register*.

The amendments are proposed under Texas Occupations Code §201.152, relating to rules, and §201.1525, relating to the development of proposed rules regarding scope of practice of chiropractic. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic. Section 201.1525 mandates that the Board adopt rules clarifying what activities are included within the scope of practice of chiropractic and what activities are outside the scope.

No other statutes, articles, or codes are affected by the proposed amendments.

§75.17. Scope of Practice.

(a) (No change.)

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:

(1) - (2) (No change.)

(3) Incision--A cut or a surgical wound; also, a division of the soft parts made with a knife.

(4) Musculoskeletal system--The system of muscles and tendons and ligaments and bones and joints and associated tissues and nerves that move the body and maintain its form.

(5) [~~(3)~~] On-site--the presence of a licensed chiropractor in the clinic, but not necessarily in the room, while a patient is undergoing an examination or treatment procedure or service.

(6) [~~(4)~~] Practice of chiropractic--the description and terms set forth under Texas Occupations Code §201.002, relating to the practice of chiropractic.

(7) Subluxation complex--a neuromusculoskeletal condition that involves an aberrant relationship between two adjacent articular structures that may have functional or pathological sequelae, causing an alteration in the biomechanical and/or neuro-physiological reflections of these articular structures, their proximal structures, and/or other body systems that may be directly or indirectly affected by them.

(c) - (f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 26, 2006.

TRD-200603943
Glenn Parker
Executive Director
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: September 10, 2006
For further information, please call: (512) 305-6901

♦ ♦ ♦

PART 31. TEXAS STATE BOARD OF EXAMINERS OF DIETITIANS

CHAPTER 711. DIETITIANS

22 TAC §711.17

The Texas State Board of Examiners of Dietitians (board) proposes an amendment to §711.17, concerning the licensure and regulation of dietitians.

The amendment updates the rule to reflect current legal, policy, and operational considerations; clarifies the requirement that license holders must complete the Texas Jurisprudence Examination; and the improved draftsmanship makes the rule more accessible, understandable, and usable.

SECTION BY SECTION SUMMARY

The amendment to §711.17 will clarify that completion of continuing education is required during each two-year renewal period and that proof of completion must be submitted only if a license holder is selected for audit; delete references to the continuing education report form, which is now obsolete; correct a typographical error; and clarify that license holders must complete the Texas Jurisprudence Examination upon renewing licenses that expire in calendar years 2007 and 2008. This amendment replaces the current requirement that license holders must complete the Texas Jurisprudence Examination every four years.

FISCAL NOTE

Bobbe Alexander, Executive Secretary, has determined that for each fiscal year of the first five years the section is in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the section as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Alexander has also determined that there will be no economic costs to small businesses or micro-businesses. This was determined by interpretation of the rule that these entities will not be required to alter their business practices to comply with the section as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

Ms. Alexander has also determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section. The public benefit anticipated as a result of enforcing or administering the section is to effectively regulate the practice of dietetics in Texas, which will protect and promote public health, safety, and welfare.

REGULATORY ANALYSIS

The board has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The board has determined that the proposed amendment does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Bobbe Alexander, Executive Secretary, Texas State Board of Examiners of Dietitians, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756 or by email to dietitian@dshs.state.tx.us. When e-mailing comments, please indicate "Comments on Proposed Rules" in the e-mail subject line. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

STATUTORY AUTHORITY

The proposed amendment is authorized by Occupations Code, §701.152, which authorizes the board to adopt rules necessary for the performance of the board's duties.

The proposed amendment affects Occupations Code, Chapter 701.

§711.17. Continuing Education Requirements.

(a) (No change.)

(b) A licensee shall complete a minimum of 12 continuing education hours during each two-year licensing period. [~~Proof of having earned a minimum of six continuing education credit for a one-year renewal cycle and 12 continuing education credits for a two-year cycle shall be required at the time of renewal of each license.~~]

(1) - (2) (No change.)

(c) The licensee shall be responsible for maintaining a record of his or her continuing education experiences. The certificates, diplomas, or other documentation verifying earning of continuing education hours are not to be forwarded to the board at the time of renewal unless the licensee has been selected for audit by the board. [~~Only the completed continuing education report form should accompany the renewal form and fee if the licensee has not been selected for audit.~~]

(d) The audit process shall be as follows.

(1) (No change.)

(2) All licensees selected for audit will furnish documentation such as official transcripts, certificates, diplomas, agendas, programs, or an affidavit identifying the continuing education experience satisfactory to the board, to verify proof of having earned the continuing education hours [~~listed on the continuing education report form~~]. The documentation must be provided at the time the renewal form is returned to the board.

(3) (No change.)

(e) Failure to complete the required continuing education.

(1) A person who fails to complete continuing education requirements for renewal holds an expired license and may [~~my~~] not use the titles "licensed dietitian" or "provisional licensed dietitian".

(2) (No change.)

(f) - (h) (No change.)

(i) The Texas Jurisprudence Exam shall be required as follows.

(1) For all licenses renewed between January 1, 2007, and December 31, 2008, the licensee must successfully complete the Texas Jurisprudence Exam. [~~Effective September 1, 2006, all renewal applicants must successfully complete at the time of renewal, the Texas Jurisprudence Exam, once every four years.~~]

(2) (No change.)

(3) One hour of continuing [~~Continuing~~] education credit will be granted for successful completion of the Texas Jurisprudence Exam [~~during a four-year period~~].

(j) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 28, 2006.

TRD-200603981
Ralph McGahagin
Chair
Texas State Board of Examiners of Dietitians
Earliest possible date of adoption: September 10, 2006
For further information, please call: (512) 458-7111 x6972

♦ ♦ ♦

TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 18. MOTOR CARRIERS

The Texas Department of Transportation (department) proposes amendments to §§18.2, 18.13, 18.14, 18.16, and 18.32 concerning motor carrier definitions, registration, records, and inspections.

EXPLANATION OF PROPOSED AMENDMENTS

The proposed amendments are necessary to implement the provisions of House Bill 2702 of the 79th Legislature, Regular Session, 2005. House Bill 2702, Article 6, amended Transportation Code, §643.051, Registration Requirements, to require all household good movers to register as motor carriers regardless of the weight of the vehicles they operate. The bill also deleted the alternative registration requirements for household goods carriers under Transportation Code, §643.153, Motor Carriers Transporting Household Goods. All household goods carriers must now register under the general motor carrier registration regardless of the size of vehicles they operate. The statutory changes eliminated the need for "Type A" and "Type B" household goods carrier classifications.

These amendments were initially proposed November 17, 2005, along with other rules regarding motor carrier registration issues. These amendments were removed from the rules as adopted during the April 27, 2006, Texas Transportation Commission (commission) meeting to allow the department time to further study the issue of minimum vehicle liability insurance requirements for household goods carriers who operate vehicles weighing 26,000 pounds or less. However, due to a clerical error the language filed with the *Texas Register* on April 28, 2006, for §18.16(a) Figure 1 was not amended to reflect the language adopted by the commission. The language in Figure 1, regarding the minimum liability insurance level for household goods carriers under 26,000 pounds was not approved by the commission and is not being enforced by the department. The language now being proposed for Figure 1 is the same language that is currently published in 43 TAC §18.16(a).

To study the minimum liability insurance issues, the department has contacted other states, gathered insurance information, reviewed traffic accident studies, contacted the Texas Department of Public Safety and the Department of Insurance regarding vehicle loss records, contacted the Federal Motor Carrier Safety Administration concerning crash data, collected data from the National Institute for Occupational Safety and Health and Insurance Institute for Highway Safety, and conducted a public hearing. The information gathered from these resources was used to draft these proposed amendments.

Throughout the proposed rules, all references to "Type A" and "Type B" household goods carriers are deleted.

The definition for "Type B" household goods carrier has been deleted from §18.2 as it is no longer necessary under Transportation Code, Chapter 643.

Amended language in §18.13(i) deletes the reference to the alternative registration process for Type B carriers. These alternatives are no longer authorized by the statute due to the changes in Transportation Code, §643.051 and §643.153.

Section 18.16(a), relating to automobile liability insurance requirements, is amended to establish a minimum liability insurance requirement for vehicles weighing 26,000 pounds or less that are operated by household goods carriers as required by the statutory changes. Transportation Code, §643.101 requires that a motor carrier required to register under Subchapter B shall maintain liability insurance in an amount set by the department for each vehicle the carrier operates requiring registration. Pursuant to Transportation Code, §643.101(b), the department is to consider the class and size of the vehicle and the persons or cargo transported in setting the insurance requirement. The rules set the minimum level of liability insurance for household goods carriers with gross weight of 26,000 pounds or less at $300,000 combined single limit (CSL). This figure was selected based on the research conducted by the Motor Carrier Division, which is summarized below.

In 1995 the department required motor carriers to maintain a minimum liability insurance of $500,000 CSL for commercial vehicles over 26,000 pounds operated in Texas. Household goods carriers operating vehicles 26,000 pounds or less were not required to register as motor carriers under the same provisions and therefore, the department was not required to establish a minimum insurance requirement. These types of household goods carriers were required to maintain the minimum liability insurance levels required of all vehicles under Transportation Code, §601.072. Transportation Code, §601.007 exempts vehicles that are required to register under Transportation Code, §643.051 from the liability requirements of Transportation Code, Chapter 601.

Pursuant to Transportation Code, Chapter 601, the state mandated minimum insurance coverage for vehicles that are not required to register under the motor carrier provisions is $20,000 for bodily injury or death to one person, $40,000 for bodily in-

jury or death to two or more persons, and $15,000 for property damage. This minimum level of insurance is inadequate for a regulated commercial activity.

A look at 16 states revealed that only Florida has lower requirements than the current liability insurance limit for household goods carriers weighing 26,000 pounds or less. Several states have set their minimum limits by using the existing federal requirements. The federal regulations found at 49 CFR §387.303 set the minimum vehicle liability insurance amounts for motor carriers operating in interstate commerce by weight of the vehicle. The federal regulations require vehicles weighing under 10,000 pounds to have a minimum of $300,000 CSL. Vehicles weighing over 10,000 pounds have a minimum federal limit of $750,000 CSL. The department's proposed rule that requires household goods carriers operating vehicles weighing 26,000 pounds or less, intrastate only, to carry a $300,000 CSL liability insurance policy complies with the state statute which mandates that the minimum liability levels not exceed the federal requirements.

Large amounts of crash data are available, but the department was unable to find any accident rate studies specific to household goods carriers; therefore, very limited financial loss information is available. National statistics between 1975-2004 support that vehicles weighing 26,000 pounds or less incur as high an incident rate as do the larger trucks. The Insurance Institute for Highway Safety shows that while the death rate for occupants in passenger cars has declined 12% in the last 30 years the death rate for occupants in light trucks has increased 57%. This indicates that light trucks are involved in serious accidents that result in significant loss to the injured party. The existing minimum liability insurance requirements of Transportation Code, §601.072, are not sufficient to cover the costs of the at-fault party involved in a serious accident.

As stated, the language setting the minimum liability insurance at $300,000 was incorrectly included in the adoption filed April 28, 2006. This amendment proposes the same language and provides the justification for how the minimum liability insurance level was selected.

Proposed amendments to §18.32(c) delete information regarding where and how Type B household goods carriers must carry registration certificates.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each year of the first five years the amendments as proposed are in effect, there will be minimal fiscal implications for state or local governments as a result of enforcing or administering the amendments. There may be a moderate economic cost for persons required to comply with the sections as proposed. The fiscal impact is due to the establishment of a new minimum liability insurance requirement as required by recently enacted legislation.

The possible economic cost to persons who are required to comply with the rule as proposed will be as follows. It is anticipated that, during the next five fiscal years, annual liability insurance premiums will be approximately 39% higher than the current rates. This figure is based on estimates the department received from insurance agents questioned during the drafting of the proposed amendments. Due to the many factors that affect insurance premiums it is difficult to give a firm premium figure. Some of the factors used to set the insurance premium include: location, type of vehicle, loss history, financial strength, longevity of the business, and safety procedures. Each of these factors can have a substantial impact to either decrease or increase the actual premium, therefore, the department's estimate of 39% will not necessarily translate to the cost of the additional insurance for the entities required to comply with these provisions. In addition, it is unknown if these entities currently carry only the minimum liability insurance required. The department received information during the public hearing that many household goods carriers maintained liability insurance in amounts above that required by rule.

Carol Davis, Director, Motor Carrier Division, has certified that there will be no impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT

Ms. Davis has also determined that for each of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be the implementation of the legislation referenced in this preamble and increased protection to the traveling public. The costs involved for the traveling public who are involved in vehicle accidents include medical expenses, property damage, and loss of life. Additional insurance coverage is needed to offset the potential economic loss to the general public involved in an accident with household goods carriers.

There will be a moderate economic effect on small businesses. The department has reviewed the requirements of Government Code, §2006.002 and has determined that it is not feasible, considering the purpose of the statute under which these rules are proposed, to reduce the effect on small and micro-businesses. Transportation Code, §643.051 was amended to require all household goods carriers comply with the same motor carrier registration requirements. To provide an alternative reporting system, establish a separate compliance process, or exempt small and micro businesses from the requirements would be in effect returning to the process in place prior to the statutory change.

The insurance estimates obtained by the department show a $367 increase in the annual liability premium per vehicle as a result of raising the minimum requirement from $55,000 CSL to $300,000 CSL. Based on this figure the department has determined that a household goods carrier operating three vehicles weighing 26,000 pounds or less will have an approximately $1,100 annual increase in liability insurance premiums. A household goods carrier operating seven vehicles weighing 26,000 pounds or less will have an approximately $2,600 annual increase and a carrier with thirty vehicles will have an approximately $11,010 annual increase in premiums.

Pursuant to Government Code, §2006.002(c)(2), the department has compared the cost of compliance for the smallest businesses with the cost for the largest businesses affected by the proposed rule by using the cost for each $100 in sales. Each motor carrier, including all household goods carriers, is required to file an annual report that includes the total number of shipments transported by the carrier. Based on these figures, the department identified 23 small carriers that reported under 10 shipments and 47 large carriers that reported more than 1,450 shipments. The department contacted these 70 carriers to determine the number of vehicles they operate that will be affected by the proposed rule and their annual gross revenue. From the responses, the department determined the smallest and largest businesses affected by the proposed rule.

The three smallest businesses that will be affected by the proposed rule operate one vehicle that weighs less than 26,000 pounds. The cost to the smallest business per $100 of sales/gross revenue will be $8.09 based on a gross annual revenue of $4,537. The cost to the second smallest, with $13,800 in annual sales, will be $2.66 per $100 in sales. The third smallest business will have a cost of $.49 per $100 in sales based on their annual revenue of $75,000.

The largest businesses offer a wide variety of services related to the moving industry including household goods movers using vehicles that weigh less than 26,000 pounds. The three largest businesses identified include one that operates 31 trucks under 26,000 pounds and has an annual revenue of $4,190,894. The cost per $100 in sales for this company will be $.27. Another large company operates 30 vehicles affected by the proposed rule. The cost to this company will be $.09 based on annual sales of $12,000,000. The largest company reviewed has an annual gross revenue of $688,300,000. This company operates 21 qualifying vehicles and will see a cost of $.001 per $100 in sales.

PUBLIC HEARING

Pursuant to the Administrative Procedure Act, Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed rules. The public hearing will be held at 9:30 a.m. on August 22, 2006, in the first floor hearing room of the Dewitt C. Greer State Highway Building, 125 East 11th Street, Austin, Texas and will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make comments or presentations may register starting at 9:00 a.m. Any interested persons may appear and offer comments, either orally or in writing; however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views and identical or similar comments through a representative member when possible. Comments on the proposed text should include appropriate citations to sections, subsections, paragraphs, etc. for proper reference. Any suggestions or requests for alternative language or other revisions to the proposed text should be submitted in written form. Presentations must remain pertinent to the issues being discussed. A person may not assign a portion of his or her time to another speaker. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact Randall Dillard, Director, Public Information Office, 125 East 11th Street, Austin, Texas 78701-2483, (512) 463-8588 at least two working days prior to the hearing so that appropriate services can be provided.

SUBMITTAL OF COMMENTS

Written comments on the amendments may be submitted to Carol Davis, Director, Motor Carrier Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on September 11, 2006.

SUBCHAPTER A. GENERAL PROVISIONS

43 TAC §18.2

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §643.003, which authorizes the department to adopt rules to administer Chapter 643 regarding motor carrier registration.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 643.

§18.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (5) (No change.)

(6) Commercial motor vehicle--

(A) (No change.)

(B) Does not include:

(i) - (ii) (No change.)

(iii) a vehicle registered with the Railroad Commission under [~~Texas~~] Natural Resources Code, §113.131 and §116.072;

(iv) - (vii) (No change.)

(7) Commercial school bus--A motor vehicle owned by a motor carrier that is:

(A) - (C) (No change.)

(D) complies with Transportation Code, Chapter 548; and

(E) (No change.)

(8) - (36) (No change.)

(37) Registration receipt--A receipt issued to the registrant by its registration state after the requirements of 49 CFR[~~,~~] Part 367 have been met.

(38) Registration state--A state where the registrant maintains a valid single state registration as defined in 49 CFR[~~,~~] Part 367.

(39) - (50) (No change.)

[~~(51) Type B household goods carrier--A household goods carrier that does not use a motor vehicle or combination of vehicles with a gross weight, registered weight, or gross weight rating in excess of 26,000 pounds.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 28, 2006.

TRD-200603967
Bob Jackson
Interim General Counsel
Texas Department of Transportation
Earliest possible date of adoption: September 10, 2006
For further information, please call: (512) 463-8683

♦ ♦ ♦

SUBCHAPTER B. MOTOR CARRIER REGISTRATION

43 TAC §§18.13, 18.14, 18.16

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §643.003, which authorizes the department to adopt rules to administer Chapter 643 regarding motor carrier registration.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 643.

§18.13. Application for Motor Carrier Registration.

(a) Form of application. An application for motor carrier registration must be filed with the department's Motor Carrier Division and [~~except as provided in subsection (i) of this section,~~] must be in the form prescribed by the director and must contain, at a minimum, the following information.

(1) - (12) (No change.)

(b) - (c) (No change.)

(d) Disposition of application.

(1) Approval. An applicant meeting the requirements of this section and whose registration is approved will be issued the following documents.

(A) (No change.)

(B) Insurance cab card. The department will issue an original insurance cab card listing all vehicles to be operated under the carrier's certificate of registration. The insurance cab card shall be continuously maintained at the registrant's principal place of business. The insurance cab card will be valid for the same period as the motor carrier's certificate of registration and will contain information regarding each vehicle registered by the motor carrier. [~~This subparagraph does not apply to Type B household goods carriers.~~]

(i) - (vi) (No change.)

(2) (No change.)

(e) (No change.)

(f) Supplement to original application. A motor carrier required to register under this section shall submit a supplemental application under the following circumstances.

(1) (No change.)

(2) Change of name. A motor carrier that changes its name shall file a supplemental application for registration no later than the effective date of the change. The motor carrier shall include evidence of insurance or financial responsibility in the new name and in the amounts specified by §18.16 of this subchapter. A motor carrier that is a corporation must have its name change approved by the Texas Secretary of State before filing a supplemental application. A motor carrier incorporated outside the state [~~State~~] of Texas must complete the name change under the law of its state of incorporation before filing a supplemental application.

(3) - (7) (No change.)

(g) - (h) (No change.)

[~~(i) Type B household goods carriers. An application for motor carrier registration submitted by a Type B household goods carrier shall be in the form prescribed by the director.~~]

[~~(1) The carrier's application must contain all the information described in subsection (a) of this section, except for the information specified in subsection (a)(5) and (7) of this section.~~]

[~~(2) The carrier's application must be accompanied by a $100 application fee.~~]

[~~(3) The carrier's application must be accompanied by proof of financial responsibility for cargo loss or damage and by the filing fee specified in §18.16 of this subchapter.~~]

[~~(4) The carrier's application must include a statement certifying that the carrier:~~]

[~~(A) is in compliance with Transportation Code, Chapter 601; and~~]

[~~(B) if the carrier maintains an automobile liability insurance policy to comply with Transportation Code, Chapter 601, then the policy is an enforceable commercial or business automobile liability insurance policy.~~]

[~~(5) The department will issue an original certificate of registration, which must be continuously maintained at the registrant's principal place of business.~~]

[~~(6) A carrier shall carry a copy of its certificate of registration either in the cab of each vehicle or in each trailer used for the transportation of household goods.~~]

[~~(7) The carrier shall notify the department in writing when it discontinues operations as a transporter of household goods.~~]

[~~(8) On demand by a department-certified inspector or any other authorized government personnel, the driver shall present the certificate of registration maintained in the vehicle.~~]

[~~(9) The certificate of registration is continuously in effect until suspended or revoked by the department. A motor carrier may voluntarily cancel the certificate of registration by submitting a supplemental application or written request.~~]

[~~(10) Any erasure, alteration, or unauthorized use of a certificate of registration renders it void.~~]

(i) [~~(j)~~] Substitute vehicles leased from leasing businesses. A registered motor carrier is not required to comply with the provisions of subsection (e) of this section for a substitute vehicle leased from a business registered under §18.19 of this subchapter. A motor carrier is not required to carry proof of registration as described in subsection (d) of this section if a copy of the lease agreement for the originally leased vehicle is carried in the cab of the temporary replacement vehicle.

§18.14. Expiration and Renewal of Commercial Motor Vehicle Registration.

(a) Expiration and renewal dates.

(1) A motor carrier with annual or biennial registration [~~, other than a Type B household goods carrier,~~] will be assigned a date for the expiration and renewal of its motor carrier registration according to the last digit of the carrier's certificate of registration number, as outlined in the following chart:

Figure: 43 TAC §18.14(a)(1) (No change.)

[~~(2) Certificates of registration for Type B household goods carriers remain in effect until suspended or revoked.~~]

(2) [~~(3)~~] 90 day certificates of registration are valid for 90 calendar days from the effective date.

(3) [~~(4)~~] Seven day certificates of registration are valid for seven calendar days from the effective date.

(b) Registration renewal.

(1) Approximately 60 days before the expiration of registration, the department will mail or send electronically a renewal notice to each registered motor carrier with annual or biennial registration [~~, other than a Type B household goods carrier~~]. The notice will be mailed to the carrier's last known address according to the division's records. Failure to receive the notice does not relieve the registrant of the responsibility to renew. A motor carrier must ensure that the department receives the renewal at least 15 days prior to the renewal date specified in subsection (a) of this section. A supplement to an application for motor carrier registration renewal must:

(A) - (C) (No change.)

(2) - (5) (No change.)

§18.16. Insurance Requirements.

(a) Automobile liability insurance requirements.

[~~(1)~~] A motor carrier[~~, other than a Type B household goods carrier,~~] must file proof of commercial automobile liability insurance with the department on a form acceptable to the director for each vehicle required to be registered under this subchapter. The motor carrier must carry and maintain automobile liability insurance that is combined single limit liability for bodily injury to or death of an individual per occurrence, loss or damage to property (excluding cargo) per occurrence, or both. Extraneous information will not be considered acceptable, and the department may reject proof of commercial automobile liability insurance if it is provided in a format that includes information beyond what is required. Minimum insurance levels are indicated in the following table.

Figure: 43 TAC §18.16(a)

[~~Figure: 43 TAC §18.16(a)(1)~~]

[~~(2) Type B household goods carriers shall comply with the applicable requirements of Transportation Code, Chapter 601. If a Type B household goods carrier maintains an automobile liability insurance policy to comply with Transportation Code, Chapter 601, the policy must be an enforceable commercial or business automobile liability insurance policy.~~]

(b) - (d) (No change.)

(e) Filing proof of insurance with the department.

(1) Forms.

(A) A motor carrier [~~, other than a Type B household goods carrier,~~] shall file and maintain proof of automobile liability insurance for all vehicles required to be registered under this subchapter at all times. This proof shall be filed on a form acceptable to the director.

(B) - (C) (No change.)

(2) - (3) (No change.)

(4) Acceptable filings. The department will not accept an insurance policy or certificate of insurance unless it is issued by an insurance company licensed and authorized to do business in the state [~~State~~] of Texas. It must be in a form prescribed or approved by the DOI and signed or countersigned by an authorized agent of the insurance company. The department will accept a certificate of insurance issued by a surplus lines insurer that meets the requirements of Insurance Code, Article 1.14-2, and rules adopted by the DOI under that article.

(f) - (i) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 28, 2006.

TRD-200603968
Bob Jackson
Interim General Counsel
Texas Department of Transportation
Earliest possible date of adoption: September 10, 2006
For further information, please call: (512) 463-8683

♦ ♦ ♦

SUBCHAPTER C. RECORDS AND INSPECTIONS

43 TAC §18.32

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §643.003, which authorizes the department to adopt rules to administer Chapter 643 regarding motor carrier registration.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 643.

§18.32. Motor Carrier Records.

(a) - (b) (No change.)

(c) Proof of motor carrier registration.

(1) Except as provided in paragraph [~~paragraphs (1) and~~] (2) of this subsection, every motor carrier shall maintain a copy of its current registration listing in the cab of each registered vehicle at all times. A motor carrier shall make available to a certified inspector or any law enforcement officer a copy of the current registration listing upon request.

[~~(1) A Type B household goods carrier shall maintain a copy of its certificate of registration in either the cab of each power unit or each trailer operated on its behalf at all times. A Type B household goods carrier shall make available and accessible to a certified inspector or any law enforcement officer a copy of the current certificate of registration.~~]

(2) (No change.).

(d) - (e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 28, 2006.

TRD-200603969
Bob Jackson
Interim General Counsel
Texas Department of Transportation
Earliest possible date of adoption: September 10, 2006
For further information, please call: (512) 463-8683

♦ ♦ ♦

CHAPTER 31. PUBLIC TRANSPORTATION

The Texas Department of Transportation (department) proposes amendments to §31.3, definitions, new §31.17, concerning the job access and reverse commute program, and new §31.18 concerning the new freedom program.

EXPLANATION OF PROPOSED AMENDMENTS AND NEW SECTIONS

Title 49, USC §5316, as added by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, (Pub. L. No. 109-59) (2005) (SAFETEA-LU), authorizes the U.S. Secretary of Transportation to make available grants to support employment and employment-related public transportation activities under a program called "Job Access and Reverse Commute" (JARC).

Title 49, USC §5317, as added by SAFETEA-LU, authorizes the U.S. Secretary of Transportation to make available grants for public transportation projects that provide new public transportation services and public transportation alternatives beyond those currently required by the Americans with Disabilities Act of 1990 (ADA) that assist individuals with disabilities with transportation including transportation to and from jobs and employment support services. The program is called New Freedom (NF).

For urbanized areas less than 200,000 population and for rural areas, the governor of Texas (governor) has delegated project selection and grant administration for these programs to the Texas Transportation Commission (commission). The commission proposes the adoption of rules concerning project selection and the administration of the JARC and NF programs to implement federal laws and regulations and permit the commission to award grants.

Existing §31.3, Definitions, is amended to include new terms used in §31.17 and §31.18. Definitions are taken from federal statute or other guidance published by the Federal Transit Administration. The definitions are renumbered to accommodate the alphabetical inclusion of the terms.

New §31.3(16), Employment-related transportation, describes assistance to individuals in job search (interviews, trips to employment offices), job preparation (college or vocational training classes) and support activities such as taking children to daycare.

New §31.3(30), Job access project, defines public transportation related to the development and maintenance of transportation services designed to transport welfare recipients and eligible low-income individuals to and from jobs and employment-related destinations.

New §31.3(36), Low-income individual, is a person whose family income is at or below 150 percent of the poverty line (as that term is defined in §673(2) of the Community Services Block Grant Act (42 USC §9902(2)) for a family of the size involved, or as otherwise defined by 49 USC §5316, the Job Access and Reverse Commute program.

New §31.3(37), Mobility management, means short-range planning and management activities and projects for improving coordination among public transportation and other transportation services providers. Typically these activities are carried out by transit agencies or their subcontractors through an agreement with a person, including a governmental entity. Mobility management excludes operating public transportation services.

New §31.3(40), New public transportation service, with respect to the NF program, defines new services that: (1) are targeted toward people with disabilities; (2) meet the intent of the NF program by removing barriers to transportation and assisting persons with disabilities with transportation, including transportation to and from jobs and employment services; and (3) were not included in a Transportation Improvement Program or Statewide Transportation Improvement Program prior to August 10, 2005.

New §31.3(63), Reverse commute project, defines transportation of residents of urbanized areas and other than urbanized areas to suburban employment opportunities, or as otherwise defined by 49 USC §5316, the Job Access and Reverse Commute program.

New §31.3(82), Welfare recipient, defines an individual who has received assistance under a state or tribal program funded under part A of Title IV of the Social Security Act at any time during the previous three-year period, or as otherwise defined by 49 USC §5316, the Job Access and Reverse Commute program.

In developing new §31.17 and new §31.18, the department draws from the federal statute, the Federal Transit Administration's Interim Guidance on Implementation, published in the *Federal Register*, 71 Fed. Reg. 13,456 (March 15, 2006), and the department's existing rules for federal program administration contained in Title 43, Chapter 31, Subchapter C.

Section 31.17(a), Purpose, identifies the JARC federal law, states it purpose, and also states that the commission has been designated by the governor to administer the program in areas less than 200,000 population.

Section 31.17(b), Goal and objectives, states the department's goals and objectives for promoting public transportation services targeted to employment transportation in accordance with the Federal Transit Administration's guidance on implementing the program.

Section 31.17(c), Department role, states that the department will act as the designated recipient for funds for areas less than 200,000 population, while allowing subrecipients to retain control over daily operations.

Section 31.17(d), Project types, provides an illustrative list of projects that JARC grants may fund. The JARC project types detail elements included in these programs so that project sponsors will have an understanding of eligible project types.

Section 31.17(e), Eligible subrecipients, mirrors the language in 49 USC §5316 which lists eligible subrecipients as state agencies, local governmental authorities, private nonprofit organizations, and operators of public transportation services. Private for-profit businesses may participate as a contractor to a subrecipient. Applicants who are subrecipients of public transportation funds through another department program must be in good standing with the department as defined in §31.3.

Section 31.17(f), Eligible assistance categories, lists state administrative expenses, capital expenses, project administration expenses, planning expenses, marketing expenses and operating expenses as eligible for reimbursement and gives the percentage of federal and non-federal match required for each category.

Section 31.17(g), Ineligible expenses, lists those costs that are not reimbursable, which includes construction expenses, except for minor passenger amenities, extended vehicle warranties,

purchase and/or maintenance of vehicles for private use, and other expenses prohibited by the Federal Transit Administration.

Section 31.17(h), Local share requirements, states that other U.S. Department of Transportation funds cannot be used for the local (non-federal) match requirement. Eligible match sources include local, state and federal programs, including funds disbursed from the Texas Workforce Commission, local workforce development boards, human services agencies and the Medicaid Medical Transportation Program. Documented in-kind services related to a proposed JARC project are eligible with prior department approval. The subsection clarifies that fares cannot be used for local match but must, instead, reduce the net operating expense.

Section 31.17(i), Planning requirement, reflects the federal requirement for prioritized JARC projects to be derived from a locally developed, coordinated public transit-human services transportation plan. It is anticipated that the regional service planning process will be used to meet the requirements of the local coordinated planning process.

Section 31.17(j), Allocation of funds, allows the department to use up to 10% of the federal apportionment to urbanized areas less than 200,000 population and to nonurbanized areas for administrative, planning and technical assistance activities associated with JARC. The commission will competitively award the remaining funds. The department will issue a call for projects in the *Texas Register*. The subsection lists the content of the *Texas Register* notice. Funds from one category (urbanized area less than 200,000 population or nonurbanized area) shall not be moved to the other, without a certification from the governor. The origination location of the riders shall be the basis for determining which apportionment is used to fund a particular project.

Section 31.17(k), Grant award, states that the department will enter into a grant agreement with individual subrecipients. The commission has expressed its commitment to a plan to improve transportation in Texas. The plan has five goals: 1) reduce congestion; 2) enhance safety; 3) expand economic opportunity; 4) improve air quality; and, 5) increase the value of transportation assets. The subsection enumerates the criteria that the commission will use in awarding grant funds in a manner that facilitates the goals of the plan. Failure to expend funds in a timely manner may cause the department to terminate the grant and re-award the balance of funds to another project.

Section 31.17(l), Vehicle leasing, permits subrecipients to lease vehicles to other entities, with prior department approval, such as local public bodies or agencies, private non-profit organizations and private for-profit businesses, as long as the purpose of the JARC project is carried out by this entity. The subrecipient is responsible for ensuring the lessee follows all applicable laws and regulations.

Section 31.17(m), Incidental vehicle use, allows vehicles to be used for other purposes, and to accommodate riders not engaged in employment activities, when such activities/riders do not interfere with employment transportation purposes.

Section 31.17(n), Disposition of vehicles at end of the grant, states that vehicles purchased with JARC funds may be transferred to another subrecipient in accordance with state and federal disposition requirements.

Section 31.18(a), Purpose, identifies the New Freedom federal law, states its purpose, and also states that the commission has been designated by the governor to administer the program in areas with less than 200,000 population.

Section 31.18(b), Goal and objectives, states the department's goal and objectives for the NF program. These projects shall provide new public transportation services and public transportation alternatives beyond those currently required by the Americans with Disabilities Act of 1990 (ADA) that assist individuals with disabilities with transportation including transportation to and from jobs and employment support services.

Section 31.18(c), Department role, stipulates that the department will act as the designated recipient for funds for areas with less than 200,000 population, while allowing subrecipients to retain control over daily operations.

Section 31.18(d), Project types, provides an illustrative list of projects that NF grants may fund. The projects listed are examples of new public transportation services and public transportation alternatives beyond those currently required by the Americans with Disabilities Act of 1990 (ADA) that assist individuals with disabilities with transportation, including transportation to and from jobs and employment support services.

Section 31.18(e), Eligible subrecipients, mirrors the language in 49 USC §5317 which lists eligible subrecipients as state agencies, local governmental authorities, private nonprofit organizations, and operators of public transportation services. Private for-profit businesses may participate as a contractor to a subrecipient. Applicants who are subrecipients of public transportation funds through another department program must be in good standing with the department as defined in §31.3.

Section 31.18(f), Eligible assistance categories, lists state administrative expenses, capital expenses, project administration expenses, and operating expenses as eligible for reimbursement and gives the percentage of federal and non-federal match required for each category.

Section 31.18(g), Ineligible expenses, lists those costs that are not reimbursable, including extended vehicle warranties, purchase and/or maintenance of private use vehicles, and other FTA prohibited expenses.

Section 31.18(h), Local share requirements, states that other U.S. Department of Transportation funds cannot be used for the local (non-federal) match requirement. Eligible match sources include local, state, and federal programs, including funds disbursed from the Texas Workforce Commission, local workforce development boards, human services agencies and the Medicaid Medical Transportation Program. Documented in-kind services related to the NF project are eligible with prior department approval. The subsection clarifies that fares cannot be used for local match but must, instead, reduce the net operating expense.

Section 31.18(i), Planning requirement, reflects the federal requirement for prioritized NF projects to come from a locally developed, coordinated public transit-human services transportation plan. It is anticipated that the regional service planning process will be used to meet the requirements of the local coordinated planning process.

Section 31.18(j), Allocation of funds, allows the department to use up to 10% of the federal apportionment to urbanized areas with less than 200,000 population and to nonurbanized areas for administrative, planning, and technical assistance activities associated with NF. The commission will competitively award the remaining funds. The department will issue a call for projects in the *Texas Register*. The subsection lists the content of the

Texas Register notice. Funds from one category (urbanized area less than 200,000 population or nonurbanized area) shall not be moved to the other. The origination location of the riders shall be the basis for determining which apportionment is used to fund a particular project.

Section 31.18(k), Grant award, states that the department will enter into a grant agreement with individual subrecipients. The commission has expressed its commitment to a plan to improve transportation in Texas. The plan has five goals: 1) reduce congestion; 2) enhance safety; 3) expand economic opportunity; 4) improve air quality; and, 5) increase the value of transportation assets. The subsection enumerates the criteria that the commission will use in awarding grant funds in a manner that facilitates the goals of the plan. Failure to expend funds in a timely manner may cause the department to terminate the grant and re-award the balance of funds to another project.

Section 31.18(l), Vehicle leasing, permits subrecipients to lease vehicles to other entities, with prior department approval, such as local public bodies or agencies, private non-profit organizations, and private for-profit businesses, as long as the purpose of the NF project is carried out by this entity. The subrecipient is responsible for ensuring the lessee follows all applicable laws and regulations.

Section 31.18(m), Incidental vehicle use, allows vehicles to be used for other purposes, and to accommodate able-bodied persons, when such activities/riders do not interfere with transportation opportunities specifically designed for persons with disabilities.

Section 31.18(n), Disposition of vehicles at end of the grant, states that vehicles purchased with NF funds may be transferred to another subrecipient in accordance with state and federal disposition requirements.

The Public Transportation Advisory Committee (PTAC) met on June 28, 2006 to review the draft rules. PTAC met on July 13, 2006 and by motion recommended to the commission that the proposed amended and new rules be published in the *Texas Register*.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years the amendments and new sections as proposed are in effect, there will be fiscal implications for state or local governments as a result of enforcing or administering the amendments and new sections. SAFETEA-LU provides authorized funding for its formula programs, including JARC and NF programs, for federal fiscal years 2006 through 2009. These authorized levels will provide new federal funds of approximately $7.9 million to $9.2 million annually. With the exception of 10% of authorized funds used for department administration of the program, the funds will be made available to subrecipients in the form of competitive grants. Funds apportionment for FY 2006 will be combined and distributed along with funds for FY 2007. There are no anticipated economic costs for persons required to comply with the sections as proposed.

Eric Gleason, Director, Public Transportation Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments and new sections.

PUBLIC BENEFIT

Mr. Gleason has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments and new sections will be improved transportation services for welfare recipients and low income individuals for employment opportunities, including to suburban areas, and improved transportation services and facilities for persons with disabilities. There will be no adverse economic effect on small businesses.

PUBLIC HEARING

Pursuant to the Administrative Procedure Act, Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed rules. The public hearing will be held at 1:30 p.m. on August 30, 2006, in the first floor hearing room of the Dewitt C. Greer State Highway Building, 125 East 11th Street, Austin, Texas and will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make comments or presentations may register starting at 1:00 p.m. Any interested persons may appear and offer comments, either orally or in writing; however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views and identical or similar comments through a representative member when possible. Comments on the proposed text should include appropriate citations to sections, subsections, paragraphs, etc. for proper reference. Any suggestions or requests for alternative language or other revisions to the proposed text should be submitted in written form. Presentations must remain pertinent to the issues being discussed. A person may not assign a portion of his or her time to another speaker. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact Randall Dillard, Director, Public Information Office, 125 East 11th Street, Austin, Texas 78701-2483, (512) 463-8588 at least two working days prior to the hearing so that appropriate services can be provided.

SUBMITTAL OF COMMENTS

Written comments on the amendments and new sections may be submitted to Eric Gleason, Director, Public Transportation Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on September 11, 2006.

SUBCHAPTER A. GENERAL

43 TAC §31.3

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Transportation Code, §201.101 and Chapter 461.

§31.3. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) - (6) (No change.)

(7) Common rule--49 CFR[;] Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

(8) - (15) (No change.)

(16) Employment-related transportation--Transportation to support services that assist individuals in job search or job preparation. Trips to daycare centers, one-stop workforce centers, jobs interviews, and vocational training are examples.

(17) [~~(16)~~] Equipment--Tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit.

(18) [~~(17)~~] Executive director--The chief executive officer of the department.

(19) [~~(18)~~] Fatality--A death that results from an incident and that occurs within 30 days following the incident.

(20) [~~(19)~~] Federally funded project--A public transportation project that is being funded in part under the provisions of the Federal Transit Act, as amended, 49 USC §5301 et seq., the Federal-Aid Highway Act of 1973, as amended, 23 USC §101 et seq., or any other federal program for funding public transportation.

(21) [~~(20)~~] Fiscal year--The state accounting period of 12 months that begins on September 1 of each calendar year and ends on August 31 of the following calendar year.

(22) [~~(21)~~] FRA--The Federal Railroad Administration, an agency of the United States Department of Transportation.

(23) [~~(22)~~] FTA--The Federal Transit Administration, an agency of the United States Department of Transportation.

(24) [~~(23)~~] Good standing--A status indicating that the department's director of public transportation has not sent a letter to an entity signifying the entity is in noncompliance with any aspect of a program.

(25) [~~(24)~~] Hazard--Any real or potential condition (as defined in the rail transit agency's hazard management process) that can cause injury, illness, or death; damage to or loss of a system, equipment or property; or damage to the environment.

(26) [~~(25)~~] Incident--An intentional or unintentional act that occurs on or in association with transit-controlled property and that threatens or affects the safety or security of an individual or property.

(27) [~~(26)~~] Individual--A passenger; employee; contractor; other rail transit facility worker; pedestrian; trespasser; or any person on rail transit controlled property.

(28) [~~(27)~~] Injury--Any physical damage or harm that occurs to an individual as a result of an incident and that requires immediate medical attention away from the scene.

(29) [~~(28)~~] Investigation--The process used to determine the causal and contributing factors of an accident or hazard, so that actions can be identified to prevent recurrence.

(30) Job access project--A public transportation project relating to the development and maintenance of transportation services designed to transport welfare recipients and eligible low-income individuals to and from jobs and activities related to their employment, or as otherwise defined by 49 USC §5316, the Job Access and Reverse Commute program.

(31) [~~(29)~~] Like-kind exchange--The trade-in or sale of a transit vehicle before the end of its useful life to acquire a replacement vehicle of like kind.

(32) [~~(30)~~] Local funds--Directly generated funds, as defined in the latest edition of the Federal Transit Administration National Transit Database Reporting Manual. Examples include, but are not limited to, passenger fares, special transit fares, purchased transportation fares, park and ride revenue, other transportation revenue, charter service revenue, freight tariffs, station and vehicle concessions, advertising revenue, funds dedicated to transit at their source, taxes, cash contributions, contract revenue, general revenue, and in-kind contributions.

(33) [~~(31)~~] Local governmental entity--Any local unit of government including a city, town, village, municipality, county, city transit department, metropolitan transit authority, or regional transit authority.

(34) [~~(32)~~] Local public body--Includes cities, counties, and other political subdivisions of states; public agencies; and instrumentalities of one or more states, municipalities, or political subdivisions of states.

(35) [~~(33)~~] Local share requirement--The amount of funds required and eligible to match federally funded projects for the improvement of public transportation.

(36) Low income individual--An individual whose family income is at or below 150 percent of the poverty line (as that term is defined in section 673(2) of the Community Services Block Grant Act (42 USC §9902(2)), including any revision required by that section, for a family of the size involved, or as otherwise defined by 49 USC §5316, the Job Access and Reverse Commute program.

(37) Mobility management--Consists of short-range planning and management activities and projects for improving coordination among public transportation and other transportation services providers carried out by transit agencies or their subcontractors through an agreement with a person, including a government entity. Mobility management excludes operating public transportation services.

(38) [~~(34)~~] MPO--Metropolitan Planning Organization, the organization designated by the governor as the responsible entity for transportation planning in urbanized areas over 50,000 in population.

(39) [~~(35)~~] Net operating expenses--Those expenses that remain after operating revenues are subtracted from eligible operating expenses.

(40) New public transportation service--Service, with respect to the New Freedom program, that:

(A) is targeted toward people with disabilities;

(B) meets the intent of the program by removing barriers to transportation and assisting persons with disabilities with transportation, including transportation to and from jobs and employment services; and

(C) is not included in a Transportation Improvement Program or Statewide Transportation Improvement Program prior to August 10, 2005.

(41) [~~(36)~~] New starts project--Any rail fixed guideway system funded under FTA's 49 USC §5309 [~~U.S.C. 5309~~] discretionary construction program.

(42) [~~(37)~~] Nonprofit organization--A corporation or association determined by the Secretary of the Treasury of the United States to be an organization described by 26 USC §501(c), one that is exempt

from taxation under 26 USC §504(a) or §101, or one that has been determined under state law to be nonprofit and for which the state has received documentation certifying the status of the nonprofit organization.

(43) [~~(38)~~] Nonurbanized area--An area outside an urbanized area.

(44) [~~(39)~~] Obligated funds--Monies made available under a valid, unexpired contract between the department and a public transportation subrecipient.

(45) [~~(40)~~] Operating expenses--Costs directly related to system operations of a transit agency regardless of the category of funding. At a minimum, this definition includes:

(A) fuel, oil, replacement tires, replacement parts that do not meet the criteria for capital items, drivers' and mechanics' salaries and fringe benefits, dispatchers' salaries, and licenses;

(B) maintenance, repair, servicing, and inspection of transit agency property, including both vehicles and other property, whether routine or to remedy the effects of collision damage or vandalism; and

(C) expenses funded with capital or administrative funds, including preventative maintenance, provision of paratransit service under the Americans with Disability Act (ADA), capital cost of contracting, and insurance.

(46) [~~(41)~~] Passenger operations--The period of time when any aspects of rail transit agency operations are initiated with the intent to carry passengers.

(47) [~~(42)~~] Private--Pertaining to nonpublic entities. This definition does not include municipalities or other political subdivisions of the state; public agencies or instrumentalities of one or more states; Indian tribes (except private nonprofit corporations formed by Indian tribes); public corporations, boards, or commissions established under the law of any state; or entities subject to control by public authority, whether state or municipal.

(48) [~~(43)~~] Program standard--A written document developed and distributed by the oversight agency, that describes the policies, objectives, responsibilities, and procedures used to provide rail transit agency safety and security oversight.

(49) [~~(44)~~] Project--The public transportation activities to be carried out by a subrecipient, as described in its application for funding.

(50) [~~(45)~~] Property damage--The dollar amount required to replace any vehicle, whether transit or non-transit, and any property or facility damaged during an incident, or to repair it to the condition of the property or facility [~~a state equivalent to the state~~] that existed before the incident.

(51) [~~(46)~~] Public transportation--Transportation of passengers and their hand-carried packages or baggage on a regular or continuing basis by means of surface or water conveyance. This definition includes fixed guideway transportation and underground transportation, but excludes services provided by aircraft, taxicabs, ambulances, and emergency vehicles.

(52) [~~(47)~~] Rail transit accident--An incident involving a rail fixed guideway transit vehicle or taking place on rail fixed guideway transit controlled property where one or more of the following occurs:

(A) a [~~A~~] fatality at the scene; or where an individual is confirmed dead within thirty (30) days of a rail fixed guideway transit-related incident;

(B) injuries [~~Injuries~~] requiring immediate medical attention away from the scene for two or more individuals;

(C) property [~~Property~~] damage to rail fixed guideway transit vehicles, non-rail transit vehicles, other rail transit property or facilities and non-transit property that equals or exceeds $25,000;

(D) an [~~An~~] evacuation due to life safety reasons;

(E) a [~~A~~] collision at a grade crossing;

(F) a [~~A~~] main-line derailment;

(G) a [~~A~~] collision with an individual on a rail fixed guideway right of way; or

(H) a [~~A~~] collision between a rail fixed guideway transit vehicle and a second rail fixed guideway transit vehicle, or a rail fixed guideway transit non-revenue vehicle.

(53) [~~(48)~~] Rail transit agency--An entity operating a rail fixed guideway system.

(54) [~~(49)~~] Rail transit contractor--An entity that performs tasks required on behalf of the oversight or rail transit agency. The fixed guideway system may not be a contractor for the oversight agency.

(55) [~~(50)~~] Rail transit controlled property--Property that is used by the rail transit agency and may be owned, leased, or maintained by the rail transit agency.

(56) [~~(51)~~] Rail transit fixed guideway system--Any light, heavy, or rapid rail system, monorail, inclined plane, funicular, trolley, or automated guideway, as determined by the FTA, that:

(A) is not regulated by the Federal Railroad Administration; and

(B) is included in FTA's calculation of fixed guideway route miles or receives funding under FTA's formula program for urbanized areas (49 USC §5336 [~~U.S.C. 5336~~]); or

(C) has submitted documentation to FTA indicating its intent to be included in FTA's calculation of fixed guideway route miles to receive funding under FTA's formula program for urbanized areas (49 USC §5336 [~~U.S.C. 5336~~]).

(57) [~~(52)~~] Rail transit passenger--A person who is on board, boarding, or alighting from a rail transit vehicle for the purpose of travel.

(58) [~~(53)~~] Rail transit vehicle--The rail transit agency's rolling stock, including, but not limited to passenger and maintenance vehicles.

(59) [~~(54)~~] Real property--Land, including improvements, structures, and appurtenances, but excluding movable machinery and equipment.

(60) [~~(55)~~] Revenue service--Passenger transportation occurring when a vehicle is available to the general public and there is a reasonable expectation of carrying passengers that directly pay fares, are subsidized by public policy, or provide payment through some contractual agreement. This does not imply that a cash fare must be paid. Vehicles operated in free fare services are considered in revenue service.

(61) [~~(56)~~] Revenue vehicle--The rolling stock used in providing transit service for passengers. This definition does not include a

vehicle used in connection with keeping revenue vehicles in operation, such as a tow truck or a staff car.

(62) [~~(57)~~] Revenues--Fares paid by riders, including those who are later reimbursed by a human service agency or other user-side subsidy arrangement. This definition includes subscription service fees, whether or not collected on-board a transit vehicle. Payments made directly to the transportation system by a human service agency are not considered to be revenues.

(63) Reverse commute project--A public transportation project designed to transport residents of urbanized areas and other than urbanized areas to suburban employment opportunities, or as otherwise defined by 49 USC §5316, the Job Access and Reverse Commute program.

(64) [~~(58)~~] Ridership--Unlinked passenger trips.

(65) [~~(59)~~] Ridesharing activities--Transportation provided by rubber-tired vehicles that carry no fewer than 10 nor more than 15 passengers and that are operated on a nonprofit basis.

(66) [~~(60)~~] Rural public transportation (RPT)--A generic term used to identify subrecipients who provide service in nonurbanized areas.

(67) [~~(61)~~] Rural transit district--A political subdivision of the state that provides and coordinates rural public transportation within its boundaries in accordance with the provisions of Transportation Code, Chapter 458.

(68) [~~(62)~~] Safety--Freedom from harm resulting from unintentional acts or circumstances.

(69) [~~(63)~~] Security--Freedom from harm resulting from intentional acts or circumstances. Intentional danger includes crimes and must be reported to the department if the intentional act meets the thresholds for notification.

(70) [~~(64)~~] Stakeholders--All individuals or groups that are potentially affected by transportation decisions. Examples include public agencies, representatives of transportation agency employees or other affected employees, private providers of transportation, non-governmental agencies, local businesses, persons in diverse and traditionally underserved communities, and other interested parties.

(71) [~~(65)~~] Strategic priorities--Projects that the commission has determined will:

(A) stabilize funding levels;

(B) increase transit operating efficiency or effectiveness as demonstrated by significant cost savings or substantial enhancements to service delivery; or

(C) advance the level of coordination among transportation service providers, and among transportation service providers and health and human services agencies.

(72) [~~(66)~~] Subrecipient--An entity that receives state or federal transportation funding [~~FTA assistance~~] from the department, rather than directly from FTA or other state or federal funding source.

(73) [~~(67)~~] System safety program plan--A document developed by the rail transit agency, describing its safety policies, objectives, responsibilities, and procedures.

(74) [~~(68)~~] System security plan--A document developed by the rail transit agency describing its security policies, objectives, responsibilities, and procedures.

(75) [~~(69)~~] Uniform grant and contract management standards--The standards contained in the Texas Administrative Code, Title 1, Chapter 5, Subchapter A, concerning uniform grant and contract management standards for state agencies.

(76) [~~(70)~~] Unlinked passenger trips--The number of passengers who board public transportation vehicles. A passenger is counted each time the passenger boards a vehicle even though the passenger might be on the same journey from origin to destination.

(77) [~~(71)~~] Urban transit district--In accordance with Transportation Code, Chapter 458, a local governmental body or a political subdivision of the state that operates a public transportation system in an urbanized area with a population between 50,000 and 200,000, according to the most recent federal census. This definition includes small urban transportation providers under Transportation Code, Chapter 456, that received state money through the department on September 1, 1994.

(78) [~~(72)~~] Urbanized area--A core area and the surrounding densely populated area with a population of 50,000 or more, with boundaries fixed by the United States Census Bureau.

(79) [~~(73)~~] Vehicle miles--The miles a vehicle travels while in revenue service, plus deadhead miles. This definition excludes miles a vehicle travels for charter service, school bus service, operator training, or maintenance testing.

(80) [~~(74)~~] Vehicle revenue hours or miles--The hours or miles a vehicle travels while in revenue service. This definition includes layover and recovery, but excludes travel to and from storage facilities, the training of operators prior to revenue service, road tests, deadhead travel, and school bus and charter service.

(81) [~~(75)~~] Vehicle utilization--Average daily passenger trips per revenue vehicle, divided by average revenue vehicle capacity. This definition provides a measure of an individual system's ability to use existing seating capacity.

(82) Welfare recipient--An individual who has received assistance under a state or tribal program funded under the Social Security Act, Title IV, Part A, at any time during the previous three year period, or as otherwise defined by 49 USC §5316, the Job Access and Reverse Commute program.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 28, 2006.

TRD-200603970
Bob Jackson
Interim General Counsel
Texas Department of Transportation
Earliest possible date of adoption: September 10, 2006
For further information, please call: (512) 463-8683

SUBCHAPTER C. FEDERAL PROGRAMS

43 TAC §31.17, §31.18

STATUTORY AUTHORITY

The new sections are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Transportation Code, §201.101 and Chapter 461.

§31.17. Section 5316 Grant Program.

(a) Purpose. The Federal Transit Act, codified at 49 USC §5316, authorizes the Secretary of the United States Department of Transportation to make grants for public transportation projects for access to jobs and reverse commute purposes. The commission has been designated by the governor to administer the Section 5316 program, known as the Job Access and Reverse Commute program, or JARC, in areas less than 200,000 population.

(b) Goal and objectives. The department's goal in administering the Section 5316 program is to promote the availability of public transportation services targeted to employment and employment-related transportation needs. To achieve this goal, the department's objectives are to:

(1) promote the development of employment transportation services throughout the state, in partnership with local officials, public and private non-profit agencies, and operators of public transportation services;

(2) fully integrate the Section 5316 program with other federal and state programs supporting public, employment, and human service transportation;

(3) foster the development of local, coordinated public and human service transportation service plans from which JARC projects are derived;

(4) support local economic development; and

(5) improve the efficiency and effectiveness of the Section 5316 program through the provision of technical assistance.

(c) Department role. The department acts as the designated recipient for Section 5316 funds apportioned to the state for all urbanized areas less than 200,000 population and all nonurbanized areas. The subrecipient shall retain control of daily operations.

(d) Project types.

(1) Job access projects include:

(A) financing the eligible costs of projects that provide public transportation services targeted to welfare recipients and eligible low-income individuals;

(B) promoting public transportation use by low-income workers, including the use of public transportation by workers with nontraditional work schedules;

(C) promoting the use of employer-provided transportation, including the transit pass benefit program under Section 132 of the Internal Revenue Code of 1986;

(D) supporting mobility management and coordination programs among public transportation providers and other human service agencies providing employment or employment-related transportation services; and

(E) otherwise facilitating or providing transportation for employment or employment-related purposes by welfare recipients and low income persons.

(2) Reverse commute projects include:

(A) subsidizing the costs associated with adding reverse commute bus, train, carpool, van routes, or service from urbanized areas and other than urbanized areas to suburban workplaces;

(B) subsidizing the purchase or lease by a nonprofit organization or public agency of a van or bus dedicated to shuttling employees from their residences to a suburban workplace;

(C) supporting mobility management and coordination programs among public transportation providers and other human service agencies providing employment or employment-related transportation services; and

(D) otherwise facilitating or providing public transportation services to suburban employment opportunities.

(e) Eligible subrecipients.

(1) State agencies, local governmental authorities, private nonprofit organizations, and operators of public transportation services are eligible to receive Section 5316 funds through the department. Private for-profit operators of public transportation services may participate in the program through contracts with eligible subrecipients.

(2) Applicants who are subrecipients of public transportation funds through another program administered by the department must be in good standing with the department as defined in §31.3 of this chapter.

(f) Eligible assistance categories.

(1) State administrative expenses. The department may use up to 10% of the annual federal apportionment for urbanized areas less than 200,000 population and nonurbanized areas to defray the expenses incurred for the planning and administration of the Section 5316 program. State administrative and technical assistance expenses do not require a non-federal match.

(2) Capital expenses.

(A) Eligible items are:

(i) buses, vans, or other paratransit vehicles, fare boxes, wheelchair lifts and restraints;

(ii) equipment for transporting bicycles on public transit vehicles;

(iii) radios and communication equipment;

(iv) equipment installation costs;

(v) vehicle procurement, testing, inspection, and acceptance costs;

(vi) preventive maintenance, including all maintenance costs;

(vii) vehicle rebuilding or overhaul;

(viii) capital and operating support including computer hardware or software, with prior department approval;

(ix) transit-related intelligent transportation systems;

(x) the introduction of new technology, through innovative and improved products, into public transportation;

(xi) passenger shelters, bus stop signs, and similar passenger amenities, with prior department approval;

(xii) mobility management;

(xiii) the lease of vehicles or equipment, provided that the subrecipient, with the concurrence of the department, determines that a lease is more cost effective than purchase after considering management efficiency, availability of equipment, staffing capabilities, and guidelines on capital leases as contained in 49 CFR Part 639;

(xiv) the capital portions of costs for service under contract as described in FTA Circular 9030.1C or its latest published version; and

(xv) the provision of Americans with Disabilities Act of 1990 (ADA) paratransit service directly related to fixed route JARC services, which shall be used only by subrecipients that are in compliance with ADA requirements for both fixed route and demand responsive service.

(B) Reimbursement rates.

(i) federal funds may be used to reimburse up to 80% of eligible capital expenditures;

(ii) the federal share may increase to up to 90% for incremental costs related to compliance with the Clean Air Act or with the ADA; and

(iii) eligibility standards for the higher federal share are defined in FTA Circular 9030.1C, or its latest version.

(3) Project administration. Administrative costs associated with the JARC project are eligible for a federal reimbursement rate of 50%.

(4) Planning activities. The federal reimbursement rate is 80%. Planning activities may include:

(A) studies relating to management, operations, and capital requirements;

(B) evaluation of previously funded projects; and

(C) other similar or related activities prior to and in preparation for the undertaking or improvement of JARC-eligible services.

(5) Marketing projects. The federal reimbursement rate is 80%. Marketing activities may include:

(A) market research;

(B) production of route maps and schedules;

(C) information delivery;

(D) website development;

(E) advertising;

(F) promotion of the use of transit vouchers by welfare recipients and eligible low income individuals; and

(G) promotion of employer-provided transportation, including the Internal Revenue Service's transit pass benefit.

(6) Operating expenses. Operating expenses are reimbursed at 50% of net operating expenses. Operating expenses are those costs directly tied to systems operations. FTA Circular 9030.1C or its latest published version shall be the guide for determining eligible operating expenses. Examples are:

(A) fuel;

(B) oil;

(C) driver, dispatcher, and mechanic salaries; and

(D) purchase of service.

(g) Ineligible expenses include:

(1) construction, except for passenger shelters, signage, and similar passenger amenities specifically approved by the department;

(2) extended vehicle warranties;

(3) purchase and/or maintenance of vehicles intended for private use; and

(4) other FTA-prohibited expenses.

(h) Local share requirements.

(1) Eligible match sources include local, state, or federal programs, including funds disbursed from the Texas Workforce Commission, local workforce development boards, human service agencies, and the Medicaid Medical Transportation Program. Unrestricted federal funds are also eligible as match, such as Temporary Assistance for Needy Families (42 USC 603(a)(5)(C)(vii)). With prior department approval, in-kind contributions, volunteer services, and donations directly attributable to the project are eligible as local share if the value is documented.

(2) Other U.S. Department of Transportation program funds cannot be used as the local share required for Section 5316 grants. Fares cannot be used as match for any expense but must, instead, be used to determine the net operating expense to reduce the amount of requested reimbursement.

(i) Planning requirement.

(1) Projects submitted in response to the department's call for projects must be derived from a locally developed, coordinated public transit-human service transportation plan. The plan must be developed through a process that includes representatives of public, private, and nonprofit transportation and human service providers and participation by the public.

(2) The commission supports the development of regional service plans that respond to the department's charge in Transportation Code, §461.004 to identify:

(A) overlaps and gaps in the provision of public transportation services, including services that could be more effectively provided by existing, privately funded transportation resources;

(B) underused equipment owned by public transportation providers; and

(C) inefficiencies in the provision of public transportation services by any public transportation provider.

(3) The commission anticipates that the regional service planning process will be used to meet the requirements of the local coordinated planning process described in paragraph (1) of this subsection. Regions interested in participating in the JARC program shall develop and prioritize Section 5316 projects in response to the employment transportation deficiencies identified in the regional planning process and documented in the plan.

(4) A JARC project must:

(A) contain goals and objectives;

(B) discuss rider origination location and employment and employment-related destinations and how the project fills the transportation gap;

(C) describe how it implements the regional service plan;

(D) explain how the project will maximize use of existing transportation service providers;

(E) provide a cost estimate; and

(F) identify match sources including employer-provided or employer-assisted transportation service strategies incorporated in the project.

(j) Allocation of funds. As part of its administration of the Section 5316 program, the department is charged with ensuring that

there is a fair and equitable distribution of program funds within the state (49 USC §5316(f)(2)).

(1) The department will act as the designated recipient for projects in urbanized areas of less than 200,000 population and in nonurbanized areas. Of the amount apportioned to these areas by FTA's annual publication in the *Federal Register*, the department may use up to 10% of the total for its administrative, planning, and technical assistance activities to support the JARC program statewide.

(2) The department will allocate the remaining Section 5316 funds to subrecipients through a statewide competitive selection process.

(3) Unless the governor certifies that all program objectives are being met, funds apportioned to urbanized areas with less than 200,000 population will be available only to fund projects in these geographic areas.

(4) Funds apportioned to nonurbanized areas will be available only for projects serving nonurbanized areas.

(5) The origination location of the riders, not their destination, shall be the basis for determining which apportionment the department uses to fund an approved project.

(6) At a minimum, the department will publish a notice in the *Texas Register* soliciting proposals for the award of Section 5316 JARC grants. An eligible entity may submit a proposal for an eligible project in response to the published notice.

(A) The proposal must include a detailed description of:

(i) the project and the need for the project;

(ii) how the award of transportation JARC funds will expand the availability of employment related transportation services;

(iii) how the project will:

(I) promote the development of employment transportation services;

(II) support local economic development and expand economic opportunity for economically disadvantaged individuals;

(III) fully integrate the JARC program with other federal and state programs supporting public, employment, and human service transportation; and

(IV) improve the efficiency and effectiveness of employment related transportation opportunities.

(B) must describe its relationship to the locally developed, coordinated public transit-human service transportation plan; and

(C) the department may require supplemental information to clarify the issues described in paragraph (6)(A) and (B) of this subsection.

(k) Grant award.

(1) After commission and FTA approval of the program of projects, the department will enter into grant agreements with individual subrecipients. A subrecipient must comply with all rules and regulations applicable to the Section 5316 program.

(2) The commission will make the final selection of projects and will select projects based on the potential of the project to:

(A) reduce congestion;

(B) expand economic opportunity;

(C) enhance safety;

(D) improve air quality; and

(E) increase the value of transportation assets.

(3) Failure to expend funds in a timely manner may cause the department to terminate the grant and re-award the unobligated balance to another project.

(l) Vehicle leasing. Vehicles acquired under the Section 5316 program may be leased to other entities, with prior department approval, such as local public bodies or agencies, private non-profit agencies, or private for-profit operators. The lessee shall operate the vehicles on behalf of the Section 5316 subrecipient and provide the transportation services as described in the grant application. The Section 5316 subrecipient is responsible for seeing that all federal and state rules and regulations are observed by the lessee.

(m) Incidental vehicle use. Vehicles purchased with Section 5316 funds may be used for incidental uses that do not conflict with their primary mission-employment and employment-related transportation. Examples are stopping for retail purchases enroute home from the workday, allowing riders not engaged in employment activities to occupy vacant seats, delivering meals, or using the vehicle for other public transportation activities when not required for its JARC project purposes. Vehicles shall not be altered in any way to accommodate incidental use.

(n) Disposition of vehicles at end of the grant. If a subrecipient is no longer receiving funds for a JARC project and has purchased a vehicle with JARC funds, the vehicle may be transferred to another subrecipient, in accordance with state and federal disposition requirements.

§31.18. Section 5317 Grant Program.

(a) Purpose. The Federal Transit Act, codified at 49 USC §5317, authorizes the Secretary of the United States Department of Transportation to make grants for public transportation projects that provide new public transportation services and public transportation alternatives beyond those currently required by the Americans with Disabilities Act of 1990 (ADA) that assist individuals with disabilities with transportation, including transportation to and from jobs and employment support services. The commission has been designated by the governor to administer the Section 5317 program, known as the New Freedom Program, or NF, in areas less than 200,000 population.

(b) Goal and objectives. The department's goal in administering the Section 5317 program is to provide new or improved public transportation services to assist individuals with disabilities. To achieve this goal, the department's objectives are to:

(1) promote the development and maintenance of a network of transportation services for persons with disabilities throughout the state, in partnership with local officials, public and private nonprofit agencies, and operators of public transportation services;

(2) fully integrate the Section 5317 program with other federal, state, and local resources and programs that are designed to serve similar populations;

(3) foster the development of local, coordinated public and human service transportation service plans from which NF projects are derived;

(4) improve the efficiency, effectiveness, and safety of Section 5317 project providers through the provision of technical assistance; and

(5) include private sector operators in the overall plan to provide NF program transportation services for persons with disabilities.

(c) Department role. The department acts as the designated recipient for Section 5317 funds apportioned to the state for all urbanized areas less than 200,000 population and all nonurbanized areas. The subrecipient shall retain control of daily operations.

(d) Project types.

(1) New public transportation service projects include:

(A) purchasing vehicles and supporting accessible taxi, ride-sharing, and vanpooling programs;

(B) supporting voucher programs for transportation services offered by human service providers;

(C) supporting volunteer driver and aide programs;

(D) acquiring transportation services by a contract, lease, or other arrangement;

(E) supporting mobility management and coordination programs among public transportation providers and other human service agencies providing transportation; and

(F) otherwise facilitating or providing new transportation services for persons with disabilities, including transportation to and from employment and employment-related destinations.

(2) Public transportation alternatives "beyond ADA" projects include:

(A) providing paratransit services beyond minimum requirements (3/4 mile to either side of a fixed route) for a transit provider operating fixed route service;

(B) making accessibility improvements to existing transit and intermodal stations not designated as key stations; for example, adding an elevator or ramps, detectable warnings, improving signage;

(C) building an accessible path to a bus stop that is currently inaccessible, including curbcuts, sidewalks, pedestrian signals or other accessible features;

(D) implementing technology improvements that enhance accessibility for persons with disabilities;

(E) implementing of "same day" paratransit services; and

(F) otherwise facilitating or providing transportation services beyond ADA requirements, including transportation to and from employment and employment-related destinations.

(e) Eligible subrecipients.

(1) State agencies, local governmental authorities, private nonprofit organizations, and operators of public transportation services are eligible to receive Section 5317 funds through the department. Private for-profit operators of public transportation services may participate in the program through contracts with eligible subrecipients.

(2) Applicants who are subrecipients of public transportation funds through another program administered by the department must be in good standing with the department as defined §31.3 of this chapter.

(f) Eligible assistance categories include:

(1) State administrative expenses. The department may use up to 10% of the annual federal apportionment for urbanized areas less than 200,000 population and nonurbanized areas to defray its expenses incurred for the planning and administration of the Section 5317 program. State administrative and technical assistance expenses do not require a non-federal match.

(2) Capital expenses.

(A) Eligible items include:

(i) buses, vans, or other paratransit vehicles, fareboxes, wheelchair lifts and restraints;

(ii) radios and communications equipment;

(iii) accessibility aids;

(iv) equipment installation costs;

(v) vehicle procurement, testing, inspection, and acceptance costs;

(vi) vehicle rebuilding or overhaul;

(vii) capital and operational support including computer hardware or software, with prior department approval;

(viii) preventive maintenance, including all maintenance costs, with prior department approval;

(ix) transit-related intelligent transportation systems;

(x) the introduction of new technology, through innovative and improved products, into public transportation;

(xi) curbcuts, sidewalks, pedestrian signals or other accessible features;

(xii) mobility management;

(xiii) the lease of vehicles or equipment, provided that the subrecipient, with the concurrence of the department, determines that a lease is more cost effective than the purchase after considering management efficiency, availability of equipment, staffing capabilities, and guidelines on capital leases as contained in 49 CFR Part 639; and

(xiv) the capital portions of costs for service under contract as described in FTA Circular 9070.1E or its latest published version.

(B) Reimbursement rates.

(i) Federal funds may be used to reimburse up to 80% of eligible capital expenditures; and

(ii) the federal share may increase to up to 90% for incremental costs related to compliance with the Clean Air Act or with the ADA. Eligibility standards for the higher federal share are defined in FTA Circular 9070.1E, or its latest version.

(3) Project administration. Administrative costs associated with the NF project are eligible for a federal reimbursement rate of 50%.

(4) Operating expenses. Operating expenses are reimbursed at 50% of net operating expenses. Operating expenses are those costs directly tied to systems operations. FTA Circular 9030.1C, or its latest published version, shall be the guide for determining eligible operating expenses not specifically listed in this paragraph. Examples are:

(A) fuel and oil;

(B) engine parts and tires;

(C) driver, dispatcher, and mechanic salaries;

(D) purchase of service; and

(E) reimbursement of costs associated with a volunteer driver program.

(g) Ineligible expenses include:

(1) extended vehicle warranties;

(2) purchase and/or maintenance of vehicles intended for private use; and

(3) other FTA-prohibited expenses.

(h) Local share requirements.

(1) Eligible match sources include local, state, or federal program funds disbursed from the Texas Workforce Commission, local workforce development boards, human service agencies and the Medicaid Medical Transportation Program. Unrestricted federal funds are also eligible as match, such as Temporary Assistance for Needy Families (42 USC 603(a)(5)(C)(vii)). With prior department approval, in-kind contributions, volunteer services, and donations directly attributable to the project are eligible as local share if the value is documented.

(2) Other U.S. Department of Transportation program funds cannot be used as the local share required for Section 5317 grants. Fares cannot be used as match for any expense but must, instead, be used to determine the net operating expense to reduce the amount of requested reimbursement.

(i) Planning requirement.

(1) Projects submitted in response to the department's call for projects must be derived from a locally developed, coordinated public transit-human service transportation plan. The plan must be developed through a process that includes representatives of public, private, and nonprofit transportation and human service providers and participation by the public.

(2) The commission supports the development of regional service plans that respond to the department's charge in Transportation Code, §461.004 to identify:

(A) overlaps and gaps in the provision of public transportation services including services that could be more effectively provided by existing, privately funded transportation resources;

(B) underused equipment owned by public transportation providers; and

(C) inefficiencies in the provision of public transportation services by any public transportation provider.

(3) The commission anticipates that the regional service planning process will be used to meet the requirements of the local coordinated planning process defined in paragraph (1) of this subsection. Regions interested in participating in the NF program shall develop and prioritize Section 5317 projects in response to the opportunities to improve transportation for persons with disabilities uncovered in the regional planning process and documented in the plan.

(4) An NF project must:

(A) contain goals and objectives;

(B) discuss rider origination location and destinations and how the project fills the transportation gap by providing new transportation services or service beyond ADA requirements;

(C) describe how it implements the regional service plan;

(D) explain how the project will maximize use of existing transportation service providers;

(E) provide a cost estimate; and

(F) identify match sources.

(G) Where transportation to employment or employment-related destinations is part of the project, any employer-provided or employer-assisted transportation service strategies incorporated in the project must also be identified.

(j) Allocation of funds. As part of its administration of the Section 5317 program, the department is charged with ensuring that there is a fair and equitable distribution of program funds within the state (49 USC §5317(e)(2)).

(1) The department will act as the designated recipient for projects in urbanized areas of less than 200,000 population and in nonurbanized areas. Of the amount apportioned to these areas by FTA's annual publication in the *Federal Register*, the department may use up to 10% of the total for its administrative, planning, and technical assistance activities to support the NF program statewide.

(2) The department will allocate the remaining Section 5317 funds to subrecipients through a competitive selection process.

(3) Funds apportioned to urbanized areas less than 200,000 population will be available only to fund projects in these geographic areas.

(4) Funds apportioned to nonurbanized areas will be available only for projects serving nonurbanized areas.

(5) The origin of the riders, not their destination, shall be the basis for determining which apportionment the department uses to fund an approved project.

(6) At a minimum, the department will publish a notice in the *Texas Register* soliciting proposals for the award for Section 5317 NF grants.

(A) An eligible entity may submit a proposal for an eligible project in response to the published notice. The proposal must include a detailed description of:

(i) the project and the need for the project;

(ii) how the award of transportation NF funds will expand the availability of transportation services, or provide new transportation services, for persons with disabilities;

(iii) how the project will:

(I) promote the development and maintenance of a network of transportation services for persons with disabilities;

(II) expand economic opportunity for individuals with disabilities;

(III) fully integrate the NF program with other federal, state, and local resources and programs that are designed to serve similar populations; and

(IV) improve the efficiency, effectiveness, and safety of transportation services for persons with disabilities.

(B) must describe its relationship to the locally developed, coordinated public transit-human service transportation plan.

(C) The department may require supplemental information to clarify the issues described in paragraph (6)(A) and (B) of this subsection.

(k) Grant Award.

(1) After commission and FTA approval of the program of projects, the department will enter into grant agreements with individual subrecipients. A subrecipient must comply with all requirements, rules, and regulations applicable to the Section 5317 program.

(2) The commission will make the final selection of projects and will select projects based on the potential of the project to:

(A) reduce congestion;

(B) expand economic opportunity;

(C) enhance safety;

(D) improve air quality; and

(E) increase the value of transportation assets.

(3) Failure to expend funds in a timely manner may cause the department to terminate the grant and re-award the unobligated balance to another project.

(l) Vehicle leasing. Vehicles acquired under the Section 5317 program may be leased to other entities, with prior department approval, such as local public bodies or agencies, private non-profit agencies, or private for-profit operators. The lessee shall operate the vehicles on behalf of the Section 5317 recipient and provide the transportation services as described in the grant application. The Section 5317 recipient is responsible for seeing that all federal and state rules and regulations are observed by the lessee.

(m) Incidental vehicle use. Vehicles purchased with Section 5317 funds may be used for incidental use that does not conflict with their primary mission-providing new or beyond ADA service. Examples of incidental use are meal delivery, allowing able-bodied persons to occupy vacant seats or using the vehicle for other public transportation activities not required for its NF project purposes. Vehicles shall not be altered in any way to accommodate incidental uses.

(n) Disposition of vehicles at end of the grant. If a subrecipient is no longer receiving funds for an NF project and has purchased a vehicle with NF funds, the vehicle may be transferred to another subrecipient, in accordance with state and federal disposition requirements.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 28, 2006.

TRD-200603971
Bob Jackson
Interim General Counsel
Texas Department of Transportation
Earliest possible date of adoption: September 10, 2006
For further information, please call: (512) 463-8683

♦ ♦ ♦

WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 10. COMMUNITY DEVELOPMENT

PART 7. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION

CHAPTER 313. STATE-SPONSORED INSPECTION AND DISPUTE RESOLUTION PROCESS (SIRP)

10 TAC §313.13, §313.18

The Texas Residential Construction Commission withdraws the proposed amendments to §313.13 and §313.18 which appeared in the March 10, 2006, issue of the *Texas Register* (31 TexReg 1558).

Filed with the Office of the Secretary of State on July 28, 2006.

TRD-200603972
Susan K. Durso
General Counsel
Texas Residential Construction Commission
Effective date: July 28, 2006
For further information, please call: (512) 463-2886

♦ ♦ ♦

TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 18. MOTOR CARRIERS

SUBCHAPTER A. GENERAL PROVISIONS

43 TAC §18.2

The Texas Department of Transportation withdraws the proposed amendments to §18.2 which appeared in the July 14, 2006, issue of the *Texas Register* (31 TexReg 5589).

Filed with the Office of the Secretary of State on July 28, 2006.

TRD-200603964
Bob Jackson
Interim General Counsel
Texas Department of Transportation
Effective date: July 28, 2006
For further information, please call: (512) 463-8683

♦ ♦ ♦

SUBCHAPTER B. MOTOR CARRIER REGISTRATION

43 TAC §§18.13, 18.14, 18.16

The Texas Department of Transportation withdraws the proposed amendments to §§18.13, 18.14, and 18.16 which appeared in the July 14, 2006, issue of the *Texas Register* (31 TexReg 5589).

Filed with the Office of the Secretary of State on July 28, 2006.

TRD-200603965
Bob Jackson
Interim General Counsel
Texas Department of Transportation
Effective date: July 28, 2006
For further information, please call: (512) 463-8683

♦ ♦ ♦

SUBCHAPTER C. RECORDS AND INSPECTIONS

43 TAC §18.32

The Texas Department of Transportation withdraws the proposed amendments to §18.32 which appeared in the July 14, 2006, issue of the *Texas Register* (31 TexReg 5589).

Filed with the Office of the Secretary of State on July 28, 2006.

TRD-200603966
Bob Jackson
Interim General Counsel
Texas Department of Transportation
Effective date: July 28, 2006
For further information, please call: (512) 463-8683

♦ ♦ ♦

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 1. AGENCY ADMINISTRATION

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §1.16

The Texas Higher Education Coordinating Board adopts new §1.16, concerning Contracts for Materials and Services, without changes to the proposed text as published in the May 26, 2006, issue of the *Texas Register* (31 TexReg 4310).

Specifically, the new section requires that the Board approve all contractors for the purchase of materials or services through a vendor other than a state or local governmental entity if the cost for those materials or services is expected to exceed $750,000.00. The Agency Operations Committee shall approve all such contracts if the cost is greater than $100,000.00 but less than $750,000.00 and the Commissioner shall approve all such contracts if the cost is less than $100,000.00. The Commissioner is required to report to the Agency Operations Committee, describing all such contracts.

No comments were received regarding the new section.

The new section is adopted under the Texas Education Code, §61.067, which provides the Board with the authority to contract and Texas Education Code, §61.027, which provides the Board with the authority to adopt rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 26, 2006.

TRD-200603927
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Effective date: August 15, 2006
Proposal publication date: May 26, 2006
For further information, please call: (512) 427-6114

♦ ♦ ♦

CHAPTER 4. RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER B. TRANSFER OF CREDIT, CORE CURRICULUM AND FIELD OF STUDY CURRICULA

19 TAC §4.28

The Texas Higher Education Coordinating Board adopts an amendment to §4.28(d), (j) and (k), concerning core curriculum implementation, with changes to the proposed text as published in the May 26, 2006, issue of the *Texas Register* (31 TexReg 4310).

Specifically, the amendments to subsection (d) would provide clarification to institutions of higher education regarding the institutional core curriculum a student must follow. The new subsections (j) and (k) would provide clarification to institutions of higher education regarding the specific prohibition of institutional representatives allowing exemptions or waivers for any core curriculum course or component area requirements. It would also establish a limited procedure for Board staff to approve certain accommodations to the core curriculum requirements at a specific institution on a case-by-case basis. Several institutions have indicated that there is confusion about how to determine whether a student is a "degree-seeking" student. The proposed amendment to subsection (d) clarifies an existing rule and provides guidance to institutions as they develop policies about identifying enrolled students as "degree-seeking." The addition of subsections (j) and (k) will ensure consistency and quality in the implementation of core curricula at the diverse institutions of higher education in Texas. Since 1997, institutional decisions regarding substitutions and/or waivers of core curriculum requirements have been discouraged as a matter of policy. These clarifications and the establishment of a procedure for requesting an accommodation to an institution's core curriculum should reflect consistency and fairness while protecting the integrity of the exemplary educational outcomes for each component area of the core curriculum. The matter of waivers or exemptions to the core curriculum is not specifically addressed in the statutory requirement concerning the statewide transfer of undergraduate core curriculum, but the matter is frequently brought to Board staff by institutional representatives requesting clarification and guidance.

The following comments were received regarding the amendments:

Comment: North Harris Montgomery County College District commented that subsection (j) might be interpreted to exclude the application of incoming transfer credit from independent or out-of-state institutions to fulfillment of the core curriculum.

Response: As a result of this comment, subsection (j) was changed to clarify core curriculum requirements.

Comment: Texas Association of Community Colleges commented that administrators at colleges should be able to authorize course substitutions, citing specifically that transfer students from out-of-state institutions need to be accommodated in the application of their courses earned outside the Texas public university system of higher education to completion of core curriculum requirements.

Response: Because administrators or faculty at any public higher education institution have never been authorized to make course substitutions or waive core curriculum requirements for students already enrolled at their institutions, and because that modification addresses the specific concern addressed in each comment, no changes were made as a result of this comment.

The amendments are adopted under the Texas Education Code, §61.827, which provides the Coordinating Board with the authority to adopt rules to implement the subchapter regarding core curriculum and other transfer curricula.

§4.28. Core Curriculum.

(a) General. In accordance with Texas Education Code, §§61.821 - 61.831, each general academic institution, community college, and health-related institution shall design and implement a core curriculum, including specific courses composing the curriculum, of no less than 42 lower-division semester credit hours. Health-related institutions should encourage their students to complete their core curriculum requirement at a general academic institution or community college.

(b) Component Areas. Each institution's core curriculum must be designed to satisfy the exemplary educational objectives specified for the component areas of the "Core Curriculum: Assumptions and Defining Characteristics" adopted by the Board; all lower-division courses included in the core curriculum must be consistent with the "Texas Common Course Numbering System," and must be consistent with the framework identified in Charts I and II of this subsection. Chart I specifies the minimum number of semester credit hours required in each of five major component areas that a core curriculum must include (with sub-areas noted in parentheses). Chart II specifies options available to institutions for the remaining 6 - 12 semester credit hours.
Figure: 19 TAC §4.28(b) (No change.)

(c) Transfer of Credit--Completed Core Curriculum. If a student successfully completes the 42 semester credit hour core curriculum at a Texas public institution of higher education, that block of courses may be transferred to any other Texas public institution of higher education and must be substituted for the receiving institution's core curriculum. A student shall receive academic credit for each of the courses transferred and may not be required to take additional core curriculum courses at the receiving institution unless the Board has approved a larger core curriculum at that institution.

(d) Concurrent Enrollment.

(1) A student concurrently enrolled at more than one institution of higher education shall follow the core curriculum requirements in effect for the institution at which the student is classified as a degree-seeking student.

(2) A student who is concurrently enrolled at more than one institution of higher education may be classified as a degree-seeking student at only one institution.

(3) If a student maintains continuous enrollment from a spring semester to the subsequent fall semester at an institution at which the student has declared to be seeking a degree, the student remains a degree-seeking student at that institution regardless of the student's enrollment during the intervening summer session(s) at another institution.

(e) Transfer of Credit--Core Curriculum Not Completed. Except as specified in subsection (f) of this section, a student who transfers from one institution of higher education to another without completing the core curriculum of the sending institution shall receive academic credit within the core curriculum of the receiving institution for each of the courses that the student has successfully completed in the core curriculum of the sending institution. Following receipt of credit for these courses, the student may be required to satisfy the remaining course requirements in the core curriculum of the receiving institution.

(f) Satisfaction of Component Areas. Each student must meet the minimum number of semester credit hours in each component area; however, an institution receiving a student in transfer is not required to accept component core course semester credit hours beyond the maximum specified in a core component area.

(g) Exemplary Educational Objectives From More Than One Component Area. An institution may include within its core curriculum a course or courses that combine exemplary educational objectives from two or more component areas of the exemplary educational objectives defined in this section.

(h) Transcripts. Each institution must note core courses on student transcripts as recommended by the Texas Association of Collegiate Registrars and Admissions Officers (TACRAO).

(i) Notice. Each institution must publish and make readily available to students its core curriculum requirements stated in terms consistent with the "Texas Common Course Numbering System."

(j) Substitutions and Waivers. No institution or institutional representative may approve course substitutions or waivers of the institution's core curriculum requirements for any currently enrolled student. For students who transfer to a public institution from a college or university that is not a Texas public institution of higher education, evaluation of the courses the student completed prior to admission should apply to the fulfillment of the core curriculum component areas only those courses the institution has accepted for transfer that can demonstrate fulfillment of the exemplary educational objectives for the appropriate component area or areas.

(k) Accommodations.

(1) The Commissioner or the Commissioner's designated staff representative may, on a case-by-case basis, approve an accommodation of a specific core curriculum component area requirement for a student with a medically-documented learning disability, including but not limited to dyslexia, dysgraphia, or Asperger's Syndrome.

(2) Accommodation shall not include a waiver or exemption of any core curriculum requirement.

(3) In requesting an accommodation under this subsection, an institution may request approval of core curriculum applicability for a course the institution offers but that is not approved as a part of that institution's core curriculum, if the institution demonstrates that the course has been approved to fulfill the same specific core curriculum component area requirement at five or more other Texas public colleges or universities. The Texas Common Course Numbering System course number may be used as evidence of the suitability of the course under this subsection.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 26, 2006.

TRD-200603930
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Effective date: August 15, 2006
Proposal publication date: May 26, 2006
For further information, please call: (512) 427-6114

♦ ♦ ♦

CHAPTER 7. PRIVATE AND OUT-OF-STATE PUBLIC POSTSECONDARY EDUCATIONAL INSTITUTIONS OPERATING IN TEXAS

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §§7.6, 7.7, 7.9

The Texas Higher Education Coordinating Board adopts amendments to §§7.6, 7.7, and 7.9, concerning General Provisions, to clarify the rules and remove some incorrect references in the rules. The amendments to §7.7 are adopted with changes to the proposed text as published in the May 26, 2006, issue of the *Texas Register* (31 TexReg 4312). The amendments to §7.6 and §7.9 are adopted without changes.

Specifically, amendments to §7.6(f)(2) (relating to Duty to Report) adds language to clarify that the information reported will be evaluated by the Board in order to confirm that the institution continues to meet the standards of the Board; §7.7(2) (relating to Qualifications of Institutional Officers) is changed to replace minimum standards for qualifications of a chief academic officer which are too rigid and which do not accurately reflect good practice in higher education with qualifications that are sufficiently flexible and more accurately convey the expectations of the higher education community; and §7.9(a) (relating to Operation of Branch Campuses, Extension Centers, or Other Off-Campus Units by Exempt Institutions) is changed by removing paragraphs which created unintended consequences. These paragraphs contained redundant information, incorrect references to other sections of the rules, and unintended changes to the process of approving off-campus operations in Texas from out-of-state institutions.

The following comment was received regarding the amendments:

Comment: The Board's Certification Advisory Council met on June 23, 2006 to consider the proposed rules. The Council unanimously voted to recommend to the Board that these proposed rules be approved. They did suggest that the proposed §7.7(2)(B) be amended to add "academic freedom and responsibility, and tenure (where applicable)."

Response: The Board agreed with this recommendation and §7.7(2)(B) was changed to add this phrase.

The amendments are adopted under the Texas Education Code, §61.311, which provides the Board with the authority to adopt rules relating to Subchapter G on Regulation of Private Postsecondary Educational Institutions.

§7.7. Standards for Certificates of Authority.

The decision to grant a certificate of authority to an institution will be based on its demonstrated compliance with the following twenty-one standards. Particular attention will be paid to the institution's commitment to education, responsiveness to recommendations and suggestions for improvement, and, in the case of a renewal of a certificate of authority, record of improvement and progress following initial approval which would ensure accreditation within the time limits specified in §7.6(c)(3) of this title (relating to Certificate of Authority). The twenty-one standards represent generally accepted administrative and academic practices and principles of accredited institutions of higher education in Texas. Such practices and principles are generally set forth by regional and specialized accrediting bodies and the academic and professional societies which have established standards for their members' programs, such as the National Association of College and University Business Officers and the American Association of Collegiate Registrars and Admissions Officers.

(1) Legal Compliance. The institution shall be maintained and operated in compliance with all applicable ordinances and laws, including the rules and regulations adopted to administer those ordinances and laws. The institution shall demonstrate compliance with the Texas Education Code, Chapter 132 by supplying a copy of a certificate of approval to operate a career school or college school or a letter of exemption from the Texas Workforce Commission.

(2) Qualifications of Institutional Officers.

(A) The character, education, and experience in higher education of governing board members, administrators, supervisors, counselors, agents, and other institutional officers shall be such as may reasonably ensure that the institution can maintain the standards of the Board and progress to accreditation within the time limits set by the Board.

(B) The chief academic officer shall hold an earned doctorate awarded by an institution accredited by an agency recognized by the Board or from a foreign institution demonstrated to be equivalent to an accredited institution, and shall demonstrate sound aptitude for and experience with curriculum development and assessment; accreditation standards and processes as well as all relevant state regulations; leadership and development of faculty, including the promotion of scholarship, research, service, academic freedom and responsibility, and tenure (where applicable); and the promotion of student success.

(C) In the case of a renewal of a certificate of authority, the institutional officers also shall demonstrate a record of effective leadership in administering the institution.

(3) Governing Board. The institution shall have a governing board consisting of at least five members. The institution's governing board shall be an active policy-making body, focused on promoting the mission of the institution, and shall exercise its authority to ensure that the mission of the institution is carried out. Members of the Board shall represent the interests of the institution's constituencies of faculty, students, and supporters. The institution's governing board shall have a compliance committee consisting of not fewer than three board members. No member of the compliance committee shall have contractual employment, personal or familial, or financial interest in the institution. The compliance committee as a whole shall be responsible for reviewing continuous compliance with this chapter and shall report in writing to the full governing board at least annually. The governing board shall ensure that the institution complies with this chapter.

(4) Distinction of Roles. There shall be sufficient distinction among the roles and personnel of the governing Board of the institution, the administration, and faculty to ensure their appropriate separation and independence.

(5) Financial Resources and Stability. The institution shall have adequate financial resources and financial stability to provide education of good quality and to be able to fulfill its commitments to

students. The institution shall have sufficient reserves so that, together with tuition and fees, it would be able to complete its educational obligations to currently enrolled students if it were unable to admit any new students.

(6) Financial Records. Financial records and reports of the institution shall be kept and made separate and distinct from those of any affiliated or sponsoring person or entity. Financial records and reports at a not-for-profit institution shall be kept in accordance with the guidelines of the National Association of College and University Business Officers as set forth in College and University Business Administration, (Sixth Edition), or such later editions as may be published. An annual independent audit of all fiscal accounts of the educational institution shall be authorized by the governing board and shall be performed by a properly authorized certified public accountant.

(7) Institutional Assessment. Continual and effective assessment, planning, and evaluation of all aspects of the institution shall be conducted to advance and improve the institution. These aspects include, but are not limited to, the academic program of teaching, research, and public service; administration; financial planning and control; student services; facilities and equipment, and auxiliary enterprises.

(8) Student Admission and Remediation.

(A) Upon the admission of a student to any undergraduate program, the institution shall document the student's level of preparation to undertake college level work by obtaining proof of the student's high school graduation or General Educational Development (GED) certification and by assessing the academic skills of each entering student with an instrument approved in §4.56 of this title (relating to Assessment Instruments), and otherwise complying with §§4.51 - 4.59 of this title (relating to the Texas Success Initiative). If a GED is presented, to be valid, the score must be at or above the passing level set by the Texas Education Agency. The institution shall provide an effective program of remediation for students diagnosed with deficiencies in their preparation for collegiate study.

(B) Upon the admission of a student to any graduate program, the institution shall document that the student is prepared to undertake graduate-level work by obtaining proof that the student holds a baccalaureate degree from an institution accredited by a recognized accrediting agency, or an institution holding a certificate of authority to offer baccalaureate degrees under the provisions of this chapter, or a degree from a foreign institution equivalent to a baccalaureate degree from an accredited institution. The procedures used by the institution for establishing the equivalency of a foreign degree shall be consistent with the guidelines of the National Council on the Evaluation of Foreign Education Credentials or its successor.

(9) Faculty Qualifications. The character, education, and experience in higher education of the faculty shall be such as may reasonably ensure that the students will receive an education consistent with the objectives of the course or program of study.

(A) Each faculty member teaching in an academic associate or baccalaureate level degree program shall have at least a master's degree from an institution accredited by a recognized agency with at least 18 graduate semester credit hours in the discipline, or closely related discipline, being taught.

(B) At least 25 percent of the courses in an academic associate or baccalaureate level major shall be taught by faculty members holding doctorates, or other degrees, generally recognized as the highest attainable in the discipline, or closely related discipline, being taught, from institutions accredited by a recognized agency.

(C) Each faculty member teaching technical or vocational courses in a vocational associate degree program shall have at least an associate degree in the discipline being taught from an institution accredited by a recognized agency and at least three years of direct or closely related experience in the discipline being taught.

(D) Each faculty member teaching general education courses in a vocational associate degree program shall meet the requirements for academic associate faculty listed above.

(E) Graduate-level degree programs shall be taught by faculty holding doctorates, or other degrees generally recognized as the highest attainable in the discipline, or closely related discipline, awarded by institutions accredited by an agency recognized by the Board.

(F) With the approval of a majority of the institution's governing board, an individual with exceptional experience in the field of appointment, which may include direct and relevant work experience, professional licensure and certification, honors and awards, continuous documented excellence in teaching, or other demonstrated competencies and achievements, may serve as a faculty member without the degree credentials specified above. Such appointments shall be limited and the justification for appointment fully documented. The Coordinating Board shall evaluate the qualifications of the full complement of faculty providing instruction at the institution to determine that such appointments are justified and make up a small percentage of the faculty as a whole.

(10) Faculty Size. There shall be a sufficient number of faculty holding full time teaching appointments who are resident and accessible to the students to ensure continuity and stability of the education program, adequate educational association between students and faculty and among the faculty members, and adequate opportunity for proper preparation for instruction and professional growth by faculty members. At the associate and baccalaureate levels, there shall be at least one full-time faculty member in each program. At the graduate level, there shall be at least four full-time faculty members in each program.

(11) Academic Freedom and Faculty Security. The institution shall adopt, adhere to, and distribute to all members of the faculty a statement of academic freedom assuring freedom in teaching, research, and publication. All policies and procedures concerning promotion, tenure, and non-renewal or termination of appointments, including for cause, shall be clearly stated and published in a faculty handbook, adhered to by the institution, and supplied to all faculty. The specific terms and conditions of employment of each faculty member shall be clearly described in a written document to be given to that faculty member, with a copy to be retained by the institution.

(12) Curriculum.

(A) The quality, content, and sequence of each course, curriculum, or program of instruction, training, or study shall be appropriate to the purpose of the institution and shall be such that the institution may reasonably and adequately achieve the stated objectives of the course or program. Each program shall adequately cover the breadth of knowledge of the discipline taught and coursework must build on the knowledge of previous courses to increase the rigor of instruction and the learning of students in the discipline. Substantially all of the courses in the areas of specialization required for each degree program shall be offered in organized classes by the institution. An institution may offer no more than a very limited amount of for-credit coursework that does not directly relate to approved programs.

(B) An academic associate degree must consist of at least 60 semester credit hours or 90 quarter credit hours and not more

than 66 semester credit hours or 99 quarter credit hours. A baccalaureate degree must consist of at least 120 semester credit hours or 180 quarter credit hours and not more than 139 semester credit hours or 208 quarter credit hours. A master's degree must consist of at least 30 semester credit hours or 45 quarter credit hours and not more than 36 semester credit hours or 54 quarter credit hours of graduate level work past the baccalaureate degree.

(C) Courses designed to correct deficiencies, remedial courses for associate and baccalaureate programs, and leveling courses for graduate programs, shall not count toward requirements for completion of the degree.

(D) The degree level, degree designation, and the designation of the major course of study shall be appropriate to the curriculum offered and shall be accurately listed on the student's diploma and transcript.

(13) General Education.

(A) Each academic associate degree program shall contain a general education component consisting of at least 30 semester credit hours or 45 quarter credit hours. Each baccalaureate degree program shall contain a general education component consisting of at least 25 percent of the total hours required for graduation from the program.

(B) This component shall be drawn from each of the following areas: Humanities and Fine Arts, Social and Behavioral Sciences, and Natural Sciences and Mathematics. It shall include courses to develop skills in written and oral communication and basic computer instruction.

(C) The applicant institution may arrange to have all or part of the general education component taught by another institution, provided that:

(i) the applicant institution's faculty shall design the general education requirement;

(ii) there shall be a written agreement between the institutions specifying the applicant institutions' general education requirements and the manner in which they will be met by the providing institution;

(iii) at least one-half of the courses shall be offered in organized classes; and

(iv) the providing institution shall be accredited by a recognized accrediting agency.

(14) Credit for Work Completed Outside a Collegiate Setting.

(A) An institution awarding collegiate credit for work completed outside a collegiate setting (outside a degree-granting institution accredited by a recognized agency) shall establish and adhere to a systematic method for evaluating that work, shall award credit only in course content which falls within the authorized degree programs of the institution, in an appropriate manner shall relate the credit to the student's current educational goals, and shall subject the institution's process and procedures for evaluating work completed outside a collegiate setting to ongoing review and evaluation by the institution's teaching faculty. To these ends, recognized evaluative examinations such as the advanced placement program (AP) or the college level examination program (CLEP) may be used.

(B) No more than one quarter of the credit applied toward a student's associate or baccalaureate degree program may be based on work completed outside a collegiate setting. Those credits must be validated in the manner set forth in subparagraph (A) of this paragraph. No more than 15 semester credit hours or 23 quarter credit hours of that credit may be awarded by means other than recognized evaluative examinations. No graduate credit for work completed outside a collegiate setting may be awarded. In no instance may credit be awarded for life experience per se or merely for years of service in a position or job.

(15) Library.

(A) The institution shall have in its possession or direct control, properly catalogued, and readily available to its students and faculty a sufficient quality and variety of library holdings to support adequately its own curriculum. In addition, the institution shall supply access to educational resources appropriate to support its program that are available by electronic delivery, including access to the Internet, and shall make these educational resources available in an active and effective manner.

(B) The institution shall have adequate library facilities for the library holdings, space for study, and workspace for the librarian and library staff.

(C) The librarian shall hold a graduate degree in library science from an institution accredited by a recognized accrediting agency. The librarian shall have authority to select and acquire resources with funds in the library budget, have interaction with faculty sufficient to ensure a library collection that supports the courses and programs offered, and have adequate interaction with students to support the library and research needs of the students.

(D) Arrangements made with other libraries for the use of library materials shall be formalized in writing, the collection shall be validated by the institution to be appropriate for the programs being offered, records of usage by the students shall be kept, and the library shall be reasonably accessible to the students and faculty.

(16) Facilities. The institution shall have adequate space, equipment, and instructional materials to provide education of good quality. Student housing owned, maintained, or approved by the institution, if any, shall be appropriate, safe, and adequate.

(17) Academic Records. Adequate records of each student's academic performance shall be securely and permanently maintained by the institution.

(A) The records for each student shall contain:

(i) student contact and identification information, including address and telephone number;

(ii) records of admission documents, such as high school diploma or GED (if undergraduate) or undergraduate degree (if graduate);

(iii) records of all courses attempted, including grade; completion status of the student, including the diploma, degree or award conferred to the student; and

(iv) any other information typically contained in academic records.

(B) Two copies of said records shall be maintained in secure places.

(C) Transcripts shall be provided upon request by a student, subject to the institution's obligation, if any, to cooperate with the rules and regulations governing state, and federally guaranteed student loans.

(18) Accurate and Fair Representation in Publications, Advertising, and Promotion.

(A) Neither the institution nor its agents or other representatives shall engage in advertising, recruiting, sales, collection, financial credit, or other practices of any type which are false, deceptive, misleading, or unfair. Likewise, all publications, by any medium, shall accurately and fairly represent the institution, its programs, available resources, tuition and fees, and requirements.

(B) The institution shall provide students, prospective students prior to enrollment, and other interested persons with a catalog containing, at minimum, the following information:

(i) the institution's mission;

(ii) a statement of admissions policies;

(iii) information describing the purpose, length, and objectives of the program or programs offered by the institution;

(iv) the schedule of tuition, fees, and all other charges and expenses necessary for completion of the course of study;

(v) cancellation and refund policies;

(vi) a definition of the unit of credit as it applies at the institution;

(vii) an explanation of satisfactory progress as it applies at the institution, including an explanation of the grading or marking system;

(viii) the institution's calendar, including the beginning and ending dates for each instructional term, holidays, and registration dates;

(ix) a complete listing of each regularly employed faculty member showing name, area of assignment, rank, and each earned degree held, including degree level, degree designation, and institution that awarded the degree;

(x) a complete listing of each administrator showing name, title, area of assignment, and each earned degree held, including degree level, degree designation, and institution that awarded the degree;

(xi) a statement of legal control with the names of the trustees, directors, and officers of the corporation;

(xii) a complete listing of all scholarships offered, if any;

(xiii) a statement describing the nature and extent of available student services;

(xiv) complete and clearly stated information about the transferability of credit to other postsecondary institutions including two-year and four-year colleges and universities;

(xv) a statement of Texas Success Initiative requirements;

(xvi) any such other material facts concerning the institution and the program or course of instruction as are reasonably likely to affect the decision of the student to enroll therein; and

(xvii) any disclosures specified by the Board or defined in Board rules.

(C) The cancellation and refund policy of the institution shall be fair and shall be applied equitably.

(D) The institution shall provide to each prospective student, newly-enrolled student, and returning student, complete and clearly presented information indicating the institution's current graduation rate by program and, if required by the Board, job placement rate by program.

(E) Any special requirements, or limitations of program offerings, for the students at the Texas branch must be made explicit in writing. This may be accomplished by either a separate section in the catalog or a brochure separate from the catalog. However, if a brochure is produced, the student must also be given the regular catalog.

(F) Upon satisfactory completion of the program of study, the student shall be given appropriate educational credentials indicating the degree level, degree designation, and the designation of the major course of study, and a transcript accurately listing the information typically found on such a document, subject to institutions' obligation, if any, to cooperate with the rules and regulations governing state, and federally guaranteed student loans.

(19) Academic Advising and Counseling. The institution shall provide an effective program of academic advising for all students enrolled. The program shall include orientation to the academic program, academic and personal counseling, career information and planning, placement assistance, and testing services.

(20) Student Rights and Responsibilities. The institution shall establish and adhere to a clear and fair policy regarding due process in disciplinary matters, and publish this policy in a handbook, which shall include other rights and responsibilities of the students. This handbook shall be supplied to each student upon enrollment in the institution.

(21) Health Services. The institution shall provide an effective program of health services and education reflecting the needs of the students. The program shall include instruction on emergency and safety procedures at the institution, including appropriate responses to illness, accident, fire, and crime.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 26, 2006.

TRD-200603931
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Effective date: August 15, 2006
Proposal publication date: May 26, 2006
For further information, please call: (512) 427-6114

♦ ♦ ♦

CHAPTER 9. PROGRAM DEVELOPMENT IN PUBLIC TWO-YEAR COLLEGES

SUBCHAPTER H. PARTNERSHIPS BETWEEN SECONDARY SCHOOLS AND PUBLIC TWO-YEAR COLLEGES

19 TAC §9.147

The Texas Higher Education Coordinating Board adopts the repeal of §9.147, concerning Partnerships Between Secondary Schools and Public Two-Year Colleges, without changes to the proposal as published in the May 19, 2006, issue of the *Texas Register* (31 TexReg 4140).

Specifically, repealing §9.147 allows Board staff to adopt new rules concerning Tech-Prep consortia.

No comments were received regarding the repeal of this section.

The repeal of §9.147 is adopted under the Texas Education Code, §61.853 and §61.858, which give the Coordinating Board the authority to adopt rules regarding Tech-Prep consortia.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 26, 2006.

TRD-200603928
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Effective date: August 15, 2006
Proposal publication date: May 19, 2006
For further information, please call: (512) 427-6114

♦ ♦ ♦

SUBCHAPTER K. TECH-PREP PROGRAMS AND CONSORTIA

19 TAC §§9.201 - 9.206

The Texas Higher Education Coordinating Board adopts new §§9.201 - 9.206, concerning the statewide evaluation of Tech-Pep Consortia, without changes to the proposed text as published in the May 19, 2006, issue of the *Texas Register* (31 TexReg 4140).

Specifically, these new sections allow Board staff to develop and implement a statewide system to evaluate each Tech-Prep consortium biennially, based on criteria suggested by a committee convened for that purpose, and by Board staff.

No comments were received regarding the new sections.

The new sections are adopted under the Texas Education Code, §61.853 and §61.858, which give the Coordinating Board the authority to adopt rules regarding Tech-Prep consortia.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 26, 2006.

TRD-200603929
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Effective date: August 15, 2006
Proposal publication date: May 19, 2006
For further information, please call: (512) 427-6114

♦ ♦ ♦

CHAPTER 13. FINANCIAL PLANNING

SUBCHAPTER H. REPORTING OF TUITION AND FEES

19 TAC §13.142

The Texas Higher Education Coordinating Board adopts amendments to §13.142, concerning Financial Planning, without changes to the proposed text as published in the May 26, 2006, issue of the *Texas Register* (31 TexReg 4314).

Specifically, the amendments to §13.142(14)(B) clarify that community colleges (by statute) cannot charge designated tuition.

No comments were received regarding the amendments.

The amendments are adopted under the Texas Education Code, §54.0015.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 26, 2006.

TRD-200603932
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Effective date: August 15, 2006
Proposal publication date: May 26, 2006
For further information, please call: (512) 427-6114

♦ ♦ ♦

CHAPTER 21. STUDENT SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §21.7

The Texas Higher Education Coordinating Board adopts §21.7 concerning General Provisions, without changes to the proposed text as published in the May 26, 2006, issue of the *Texas Register* (31 TexReg 4314). Specifically, Senate Bill 1528, 79th Legislature, Regular Session, mandated the Texas Higher Education Coordinating Board to adopt by rule definitions related to tuition and fees for students under Chapter 54 of the Texas Education Code to ensure consistency in the application of state laws and policies. The new section incorporates the tuition and fee definitions found in Coordinating Board rules, Chapter 13, Financial Planning, Subchapter H, Reporting of Tuition and Fees.

No comments were received regarding the new section.

The new section is adopted under the Texas Education Code, §56.055, which provides the Coordinating Board with the authority to adopt any rules necessary to administer Texas Education Code, §§56.051 - 56.055 and §54.0071.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 26, 2006.

TRD-200603933
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Effective date: August 15, 2006
Proposal publication date: May 26, 2006
For further information, please call: (512) 427-6114

♦ ♦ ♦

SUBCHAPTER B. DETERMINING RESIDENCE STATUS

19 TAC §§21.21 - 21.27

The Texas Higher Education Coordinating Board adopts the repeal of §§21.21 - 21.27 concerning Determination of Residence Status without changes to the proposed text as published in the May 26, 2006, issue of the *Texas Register* (31 TexReg 4315). Specifically, these sections are repealed because §§21.727 - 21.735 became effective for Fall 2006 admissions.

No comments were received regarding the repeal.

The repeal is adopted under the Texas Education Code, §54.075, which provides the Coordinating Board with the authority to adopt rules to carry out the purposes of Texas Education Code, §§54.0501 - 54.075.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 26, 2006.

TRD-200603934
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Effective date: August 15, 2006
Proposal publication date: May 26, 2006
For further information, please call: (512) 427-6114

♦ ♦ ♦

SUBCHAPTER C. HINSON-HAZLEWOOD COLLEGE STUDENT LOAN PROGRAM

19 TAC §21.55, §21.63

The Texas Higher Education Coordinating Board adopts amendments to §21.55 and §21.63 concerning the Hinson-Hazlewood College Student Loan Program, without changes to the proposed text as published in the May 26, 2006, issue of the *Texas Register* (31 TexReg 4315). Specifically, the amendment to §21.55 (Eligibility of Students) aligns program rules with the Texas Education Code, §52.32 and §52.33, and §144(b) of the federal Internal Revenue Code for municipal bonds. It will ensure that the Board's low interest non-guaranteed loans are not offered to students before federal aid is offered. The amendments to §21.63 (Deceased or Disabled Borrowers) authorize the discharge of judgment debt owed by deceased or disabled borrowers, as well as judgment debt owed by deceased or disabled cosigners. Additionally, in cases where there is a judgment against the borrower and the borrower is deceased or disabled, the amendments would allow the Commissioner to determine if the release of the liability of the cosigner is in the best interest of the loan program and, if so, allow the Commissioner to authorize a release of the cosigner's liability.

No comments were received regarding the amendments.

The amendments are adopted under Texas Education Code, §52.01, which provides the Coordinating Board with the authority to adopt any rules necessary to administer Texas Education Code, §52.01 and §§52.31 - 52.40.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 26, 2006.

TRD-200603935
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Effective date: August 15, 2006
Proposal publication date: May 26, 2006
For further information, please call: (512) 427-6114

♦ ♦ ♦

SUBCHAPTER E. TEXAS B-ON-TIME LOAN PROGRAM

19 TAC §§21.122, 21.124, 21.126

The Texas Higher Education Coordinating Board adopts amendments to §21.122 concerning the Texas B-On-Time (BOT) Loan Program, with changes to the proposed text as published in the May 26, 2006, issue of the *Texas Register* (31 TexReg 4316). Section 21.124 and §21.126 are being adopted without changes. Specifically, the amendments to §21.122 (Definitions) and §21.124 (Initial Eligibility for Loans) change the name of the required high school curriculum to correspond with the new title assigned by the Texas Education Agency. The amendments to §21.126 (Disbursement to Students) align program rules with the Texas Education Code, §52.32 and §52.33, and §144(b) of the federal Internal Revenue Code for municipal bonds. They will ensure that the zero-interest B-On-Time loans are not offered to students before federal aid is offered.

The following comment was received regarding the amendments:

Comment: A comment was received that the title of the high school program in the proposed rules did not accurately reflect the title used in the Texas Education Agency rules.

Response: The Board agreed with this comment and changed distinguished achievement high school program "Advanced High School Program" to "Distinguished Achievement Program-Advanced High School Program".

The amendments are adopted under the Texas Education Code, §56.453, which provides the Coordinating Board with the authority to adopt rules for the administration of Texas Education Code, §§56.451 - 56.465.

§21.122. Definitions.
The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Board--the Texas Higher Education Coordinating Board

(2) Commissioner--the Commissioner of Higher Education

(3) Default--the failure of a borrower to make loan installment payments for a total of 180 days

(4) Recommended or Distinguished Achievement Program-Advanced High School Program--the high school curriculum recommended under §28.025(a) of the Texas Education Code

(5) Resident of Texas--A resident of the State of Texas as determined in accordance with Chapter 21, Subchapter B, of this title (relating to Determining Residence Status). Nonresident students eligible to pay resident tuition rates are not included unless they qualify as eligible nonresidents under §21.124(a)(1) of this title, (relating to Initial Eligibility for Loans).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 26, 2006.

TRD-200603936
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Effective date: August 15, 2006
Proposal publication date: May 26, 2006
For further information, please call: (512) 427-6114

♦ ♦ ♦

SUBCHAPTER J. THE PHYSICIAN EDUCATION LOAN REPAYMENT PROGRAM

19 TAC §§21.251, 21.257, 21.261 - 21.263

The Texas Higher Education Coordinating Board adopts amendments to §§21.251, 21.257, 21.261 - 21.263 concerning the Physician Education Loan Repayment Program, without changes to the proposed text as published in the May 26, 2006, issue of the *Texas Register* (31 TexReg 4317). Specifically, the proposed amendments update legislatively mandated changes to names of state agencies.

No comments were received regarding the amendments.

The amendments are adopted under the Texas Education Code, §§61.531 - 61.540, which provides the Coordinating Board with the authority to establish procedures to administer this program and Texas Education Code, §61.027, which provides the Coordinating Board with the authority to adopt rules to effectuate the provisions of Texas Education Code, Chapter 61.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 26, 2006.

TRD-200603937
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Effective date: August 15, 2006
Proposal publication date: May 26, 2006
For further information, please call: (512) 427-6114

♦ ♦ ♦

SUBCHAPTER K. THE GOOD NEIGHBOR SCHOLARSHIP PROGRAM

19 TAC §21.282

The Texas Higher Education Coordinating Board adopts an amendment to §21.282 concerning The Good Neighbor Scholarship Program, without changes to the proposed text as published in the May 26, 2006, issue of the *Texas Register* (19 TexReg 4318). Specifically, Texas Education Code, §54.207 authorizes the awarding of tuition waivers to certain citizens of other nations of the Western Hemisphere. One of the eligibility requirements is that the person be a "native-born citizen" of the nation he represents. This amendment will clarify that the term "native-born citizen" includes both a citizen of the country who was physically born in the country and one born abroad if at least one of the parents was a citizen of the country and not permanently residing in a foreign country.

No comments were received regarding the amendment.

The amendment is adopted under the Texas Education Code, §54.207, which provides the Coordinating Board with the authority to adopt rules necessary to implement The Good Neighbor Scholarship Program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 26, 2006.

TRD-200603938
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Effective date: August 15, 2006
Proposal publication date: May 26, 2006
For further information, please call: (512) 427-6114

♦ ♦ ♦

SUBCHAPTER X. DETERMINATION OF RESIDENT STATUS AND WAIVER PROGRAMS FOR CERTAIN NONRESIDENT PERSONS

19 TAC §§21.728, 21.731, 21.732

The Texas Higher Education Coordinating Board adopts amendments to §§21.728, 21.731, and 21.732, concerning Determination of Resident Status and Waiver Programs for Certain Nonresident Persons, with changes to the proposed text as published in the May 26, 2006, issue of the *Texas Register* (31 TexReg 4318). Specifically, the amendments to §21.728(3) enable institutions to base residency decisions for 2006-2007 on core questions that were promulgated by the Board prior to the passage of rules adopted in November, 2005, and based on changes to Texas Education Code, §54.075, made by the 79th Legislature. Thousands of students apply for admission each year by using the Texas Common Application (TCA), which was developed and in place for the 2006-2007 academic year before changes to Texas Education Code, §54.075, were made. The printing of new TCAs and updating of the electronic application are under way, but without this change in rule institutions would have to require students who had completed the previous core questions and been admitted for fall 2006 to go back and complete a second set of questions. In addition, we do not believe that any of the changes to the statute would cause a student who had previously been classified as a resident to lose that eligibility. The issue regarding the timing of the Texas Common Application will exist any time the core is updated, and we recommend that this flexibility be added to the residency process. The amendment to §21.728(6) clarifies that international students who have ap-

plied for Permanent Resident status are only eligible to establish a domicile in Texas if their applications are being processed and any notice of action that is issued does not indicate the person's application has been rejected. The addition of §21.728(9) is to define "financial need" as referenced in §21.735(5)(C). The addition of this definition required a renumbering of previously numbered §§21.728(9) - (25). The amendment to §21.731 is intended to lessen the reporting burden of students and institutions when the institution has documentation from the student that indicates he or she qualifies as a resident based on having lived in Texas for the 36 months leading up to graduation from high school or the receipt of a GED. There is no need for the student to also complete the core questions, but it is necessary for the institution to have the student sign a shortened form, indicating certain facts that confirm his or her claim to residency. The amendment to §21.732 clarifies that persons who transfer between institutions but are continuously enrolled in public institutions of higher education in Texas will continue to be eligible to base their residency on the classification they received at their previous institution. This provision, by statute, is not limited to students enrolled in 2006.

The following comment was received regarding the amendments:

Comment: A commenter pointed out that the cross references to §21.730, included in the proposed rules §21.731, should have been for §21.730(a)(1), (a)(2), and (a)(3) instead of §21.730(a), (b), and (c).

Response: The Board agreed with this comment and §21.731 has been changed to correct the cross references.

The amendments are adopted under the Texas Education Code, §54.075, which provides the Coordinating Board with the authority to adopt rules to carry out the purposes of Texas Education Code, §§54.0501 - 54.075.

§21.728. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Census date--the date in an academic term for which an institution is required to certify a person's enrollment in the institution for the purposes of determining formula funding for the institution.

(2) Coordinating Board or Board--the Texas Higher Education Coordinating Board.

(3) Core Residency Questions--the questions promulgated by the Board to be completed by a person and used by an institution to determine if the person is a Texas resident. For enrollments prior to the 2007-2008 academic year, institutions may use the core questions developed and distributed by the Board in 1999 or later, including the core questions included in the Texas Common Application, or the core questions set forth in Revised Chart II, which is incorporated into this subchapter. The core questions to be used for enrollments on or after the 2007-2008 academic year shall be the core questions in the Texas Common Application or in Revised Chart II.

(4) Dependent--a person who:

(A) is less than 18 years of age and has not been emancipated by marriage or court order; or

(B) is eligible to be claimed as a dependent of a parent of the person for purposes of determining the parent's income tax liability under the Internal Revenue Code of 1986.

(5) Domicile--a person's principal, permanent residence to which the person intends to return after any temporary absence.

(6) Eligible for Permanent Resident Status--a person who has filed an I-485 application for permanent residency and has been issued a fee/filing receipt or notice of action by USCIS showing that his or her I-485 has been reviewed and has not been rejected.

(7) Established a domicile in Texas--a person has established a domicile in Texas if he or she has met the conditions shown in §21.730(d) of this title (relating to Determination of Resident Status).

(8) Eligible Nonimmigrant--a person who has been issued a type of nonimmigrant visa by the USCIS that permits the person to establish a domicile in the United States.

(9) Financial need--The cost of attendance at a institution of higher education less the resources the family has available for paying for college.

(10) Gainful employment--activities intended to provide an income to a person or allow a person to avoid the expense of paying another person to perform the tasks (as in child care or the maintenance of a home). A person who is self-employed, employed as a homemaker, or who is living off his/her earnings may be considered gainfully employed for purposes of establishing residency, as may a person whose primary support is public assistance.

(11) General Academic Teaching Institution--The University of Texas at Austin; The University of Texas at El Paso; The University of Texas of the Permian Basin; The University of Texas at Dallas; The University of Texas at San Antonio; Texas A&M University, Main University; The University of Texas at Arlington; Tarleton State University; Prairie View A&M University; Texas Maritime Academy (now Texas A&M University--Galveston); Texas Tech University; University of North Texas; Lamar University; Lamar State College--Orange; Lamar State College--Port Arthur; Texas A&M University--Kingsville; Texas A&M University--Corpus Christi; Texas Woman's University; Texas Southern University; Midwestern State University; University of Houston; University of Texas--Pan American; The University of Texas at Brownsville; Texas A&M University--Commerce; San Houston State University; Texas State University--San Marcos; West Texas A&M University; Stephen F. Austin State University; Sul Ross State University; Angelo State University; and The University of Texas at Tyler, and as defined in Texas Education Code, §61.003(3).

(12) Institution or institution of higher education--any public technical institute, public junior college, public senior college or university, medical or dental unit, or other agency of higher education as defined in Texas Education Code, §61.003(8).

(13) Legal guardian--a person who is appointed guardian under the Texas Probate Code, Chapter 693, or a temporary or successor guardian.

(14) Maintain a residence--to physically reside in a location. The maintenance of a residence is not interrupted by a temporary absence from the state, as provided in §21.730(e) of this title (relating to Determination of Resident Status).

(15) Managing conservator--a parent, a competent adult, an authorized agency, or a licensed child-placing agency appointed by court order issued under the Texas Family Code, Title 5.

(16) Nonresident tuition--the amount of tuition paid by a person who does not qualify as a Texas resident under this subchapter unless such person qualifies for a waiver program under §21.735 of this title, (relating to Waivers that Permit Nonresidents to Pay Resident Tuition).

(17) Parent--a natural or adoptive parent, managing or possessory conservator, or legal guardian of a person. The term does not include a step-parent.

(18) Possessory conservator--a natural or adoptive parent appointed by court order issued under the Texas Family Code, Title 5.

(19) Private high school--a private or parochial school accredited by an accrediting agency that is recognized and accepted by the Texas Private School Accreditation Commission. The term does not include a home school.

(20) Public technical institute or college--the Lamar Institute of Technology or any campus of the Texas State Technical College System.

(21) Regular semester--a fall or spring semester, typically consisting of 16 weeks.

(22) Residence--a person's home or other dwelling place.

(23) Residence Determination Official--the primary individual at each institution who is responsible for the accurate application of state statutes and rules to individual student cases.

(24) Resident tuition--the amount of tuition paid by a person who qualifies as a Texas resident under this subchapter.

(25) Temporary absence--absence from the State of Texas with the intention to return, generally for a period of less than five years.

(26) United States Citizenship and Immigration Services (USCIS)--the bureau of the U.S. Department of Homeland Security that is responsible for the administration of immigration and naturalization adjudication functions and establishing immigration services policies and priorities.

§21.731. Information Required to Initially Establish Resident Status.

(a) To initially establish resident status under §21.730 of this title, (relating to Determination of Resident Status),

(1) a person who qualifies for residency under §21.730(a)(1) shall provide the institution with:

(A) a completed set of Core Residency Questions; or

(B) a copy of supporting documentation along with a statement of the dates and length of time the person has resided in this state, as relevant to establish resident status under this subchapter and a statement by the person that the person's presence in this state for that period was for the purpose of establishing and maintaining a domicile in Texas.

Figure: 19 TAC §21.731(a)(1)(B)

(2) a person who qualifies for residency under §21.730(a)(2) or (3) shall provide the institution with a completed set of Core Residency Questions.

(b) An institution may request that a person provide documentation to support the answers to the Core Residency Questions. A list of appropriate documents is described in Chart IV of §21.733(a) of this title (relating to Reclassification Based on Additional or Changed Information), and incorporated into this subchapter for all purposes.

Figure: 19 TAC §21.731(b) (No change.)

(c) If a person who establishes resident status under §21.730(a)(1) of this title is not a Citizen of the United States or a Permanent Resident, the person shall, in addition to the other requirements of this section, provide the institution with a signed affidavit, stating that the person will apply to become a Permanent Resident as soon as the person becomes eligible to apply. The affidavit shall be required only when the person applies for resident status and shall be in the form described in Chart III and incorporated into this subchapter for all purposes.

Figure: 19 TAC §21.731(c) (No change.)

(d) An institution shall not impose any requirements in addition to the requirements established in this section for a person to establish resident status.

§21.732. Continuing Resident Status.

(a) Except as provided under subsection (c) of this section, a person who was enrolled in an institution for any part of the previous state fiscal year and who was classified as a resident of this state under Subchapter B, Chapter 54, Texas Education Code, in the last academic period of that year for which the person was enrolled is considered to be a resident of this state for purposes of this subchapter, as of the beginning of the following fall semester. If an institution acquires documentation that a person is a continuing student who was classified as a resident at the previous institution, no additional documentation is required. The person is not required to complete a new set of Core Questions.

(b) Except as provided by subsection (c) of this section, a person who has established resident status under this subchapter is entitled to pay resident tuition in each subsequent academic semester in which the person enrolls at any institution.

(c) A person who enrolls in an institution after two or more consecutive regular semesters during which the person is not enrolled in a public institution shall submit the information required in §21.731 of this title, (relating to Information Required to Establish Resident Status), and satisfy all the applicable requirements to establish resident status.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 26, 2006.

TRD-200603939
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Effective date: August 15, 2006
Proposal publication date: May 26, 2006
For further information, please call: (512) 427-6114

♦ ♦ ♦

SUBCHAPTER CC. EARLY HIGH SCHOOL GRADUATION SCHOLARSHIP PROGRAM

19 TAC §§21.951 - 21.954, 21.956, 21.957, 21.959

The Texas Higher Education Coordinating Board adopts amendments to §21.953 and §21.956, concerning the Early High School Graduation Scholarship Program, with changes to the proposed text as published in the May 26, 2006, issue of the *Texas Register* (31 TexReg 4320). Sections 21.951, 21.952, 21.954, 21.957 and 21.959 are being adopted without changes. Specifically, the amendment to §21.951 incorporates the repeal of Chapter 21, Subchapter B of Board rules (relating to Determining Residence Status), which is being repealed and replaced as of July 2006 by Chapter 21, Subchapter X (relating to Determination of Resident Status and Waiver Programs for Certain Nonresident Persons), adopted by the Board in October 2005. The amendments to §21.952 and §21.957 are corrections of grammatical errors. The amendments to §21.953(a) and

(b) are being made to bring current rules into agreement with provisions of Texas Education Code §56.203, as amended by Senate Bill 1227 of the 79th Legislature, Regular Session. Current statutes reflect the statutory elimination of two old program requirements - a written statement of parental permission to graduate early and no previous awards through the Tuition Credit Program of 1993-1994. They also reflect the elimination of references to interim provisions for 2003-2005 which are no longer relevant to program operations. The amendments to §21.953(c) add clarity to eligibility of students who graduated on September 1, 2005, and the statutory requirement that recipients have completed high school only by attending public high schools in Texas. They also indicate that when students fail to complete the Recommended High School Curriculum for reasons beyond their control, the school district must provide a written explanation of the extenuating circumstances if it wants the student to be given consideration for an award. They also correct a previous indication that students could receive awards if they graduated in not more than 46 months, when the limit in statute is not more than 45 months. The amendments to §21.954(a) indicate the Board will make the application available though its web site. Amendments to §21.954(b) clarify that the applications, when submitted to the Board, must be signed and certified by the principal. In addition, they clarify the eligibility of students who graduated on September 1, 2005, and reflect the elimination of references to interim provisions for 2003-2005 which are no longer relevant to program operations. The addition of §21.954(c) indicates that if an award is made based on incorrect information from the school district, the district will be held responsible for making reimbursements to the program. Changes to relettered §21.954(d) indicate applications should not be submitted to the Board more than 30 days prior to a student's graduation from high school. This change is made in order to improve the accuracy of the applications submitted to the Board. Changes to relettered §21.954(d) also eliminate references to interim program provisions that are no longer relevant. The amendment to relettered §21.954(g) reflects that in order for a student to receive an eligibility letter for an institution other than the one indicated on the original application, he or she must notify the Board of the change. The amendments to §21.956(a)(1) and renumbered (3) are made primarily to eliminate references to interim provisions and restrictions that are no longer relevant to program operations and clarify the statutory provision that students who graduated prior to September 1, 2005 may use their awards only for paying tuition (not fees). Amendments to §21.956(a)(1)(C) is repealed but re-worded with clearer language in the new subsection (a)(2). Renumbered §21.956(a)(4) is reworded to add clarity regarding the use of Early High School Graduation Scholarships by students who graduated prior to September 1, 2005 to take unfunded continuing education courses. The amendments to §21.956(b) clarify the status of students who graduate on September 1, 2005, and clarify that the awards for students who graduate on or after September 1, 2005 may be used for paying for tuition and mandatory fees. Section 21.956(b)(1)(D) is renumbered to reflect the fact that it applies to all levels of awards listed in §21.956(b)(1) and renumbered §21.956(b)(3) is reworded to add clarity regarding the use of Early High School Graduation Scholarships by students who graduate on or after February 1, 2005 to take unfunded continuing education courses. The amendments to §21.959 reflect the elimination of references to interim provisions for 2003-2005 which are no longer relevant to program operations and to add active duty military service as a basis of granting a hardship extension of a student's period of eligibility.

The following comment was received regarding the amendments:

Comment: A comment was received that the title of the high school program in the proposed rules did not accurately reflect the title used in the Texas Education Agency rules.

Response: The Board agreed with this comment and changed "Advanced High School Program" to "Distinguished Achievement Program-Advanced High School Program" in §21.953(b)(3) and §21.956(b)(1)(A)(B) and (C).

The amendments are adopted under the Texas Education Code, §56.209, which states that the Coordinating Board is authorized to adopt rules to administer Texas Education Code, Chapter 56, Subchapter K, relating to the Early High School Graduation Scholarship Program.

§21.953. Eligible Students.

(a) To receive an award through the Early High School Graduation Scholarship Program, a student who graduated from high school before September 1, 2005 must:

(1) be a resident of Texas; and

(2) have completed the requirements for a high school diploma in not more than thirty-six consecutive months having completed all years of high school in Texas.

(b) To receive an award through the Early High School Graduation Scholarship Program, a student who graduated from high school on or after September 1, 2005, must:

(1) be a resident of Texas;

(2) have attended high school exclusively in one or more public high schools in this state;

(3) have successfully completed the Recommended or Distinguished Achievement Program-Advanced High School Program established under Texas Education Code, §28.025, unless the principal or other authorized representative of the student's high school provides a written explanation along with the student's transcript and exemption program application that the courses in the Recommended or Advanced High School Program which the student did not complete were unavailable to the student at the appropriate time in his or her high school career because of:

(A) shortage of qualified teachers;

(B) lack of enrollment capacity; or

(C) another cause not within the person's control, an explanation for which is provided on the transcript by the official;

(4) have graduated:

(A) in not more than 41 consecutive months; or

(B) in not more than 45 consecutive months, if the student graduated with at least 30 hours of college credit.

(c) A student's eligibility to receive a tuition credit under the Early High School Graduation Scholarship Program begins with the first regular semester or term following the student's graduation, exclusive of summer sessions that immediately follow the student's graduation. A student's eligibility to receive a tuition credit under the program ends six years after it begins, unless the student seeks and is granted an extension under §21.960 of this title (relating to Hardship Extensions).

§21.956. Award Amounts and Processing Cycle.

(a) Amounts for students graduating prior to September 1, 2005.

(1) The aggregate amount of state credit that shall be awarded to a student through this program may not exceed $1,000 to be applied only toward tuition.

(2) A student who is attending a private or independent institution may not receive a greater state tuition credit in any enrollment period than the amount of institutional aid that is provided by the institution and credited in the same manner, during that enrollment period.

(3) If a state credit awarded through the Early High School Graduation Scholarship Program is more than the amount of the student's first semester's tuition, the balance of the student's award may be used in subsequent semesters.

(4) State credits may not be used for continuing education classes that do not receive formula funding.

(b) For students whose graduation date is on or after September 1, 2005:

(1) the aggregate amount of state credit that may be awarded to a student through this program is:

(A) $2,000 to apply toward tuition and mandatory fees if the student completed the Recommended or Distinguished Achievement Program-Advanced High School Program and graduated from high school in 36 consecutive months or less and an additional $1,000 if the person graduated with at least 15 hours of college credit; or

(B) $500 to apply toward tuition and mandatory fees if the student completed the Recommended or Distinguished Achievement Program-Advanced High School Program and graduated from high school in more than 36 consecutive months but not more than 41 consecutive months and an additional $1,000 if the person graduated with at least 30 hours of college credit; or

(C) $1,000 to apply toward tuition and mandatory fees if the student completed the Recommended or Distinguished Achievement Program-Advanced High School Program and graduated from high school in more than 41 consecutive months but not more than 45 consecutive months with at least 30 hours of college credit.

(2) A student who is attending a private or independent institution may not receive a greater state tuition credit in any enrollment period than the amount of institutional aid that is provided by the institution and credited in the same manner, during that enrollment period.

(3) State credits may not be used for continuing education classes that do not receive formula funding.

(c) Form of Award--Exemption or Reimbursement.

(1) If applications are processed and announced in time, institutions should exempt recipients from the payment of relevant charges and then request reimbursement from the Board.

(2) If applications are processed and/or announced too late for the student to be exempted from such payments at registration, the student may be required to pay these charges first, and then be reimbursed by the institution when reimbursement funds are received from the Board.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 26, 2006.

TRD-200603940

Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Effective date: August 15, 2006
Proposal publication date: May 26, 2006
For further information, please call: (512) 427-6114

♦ ♦ ♦

SUBCHAPTER MM. DOCTORAL INCENTIVE LOAN REPAYMENT PROGRAM

19 TAC §21.2083, §21.2084

The Texas Higher Education Coordinating Board adopts amendments to §21.2083 and §21.2084 concerning the Doctoral Incentive Loan Repayment Program, without changes to the proposed text as published in the May 26, 2006, issue of the *Texas Register* (31 TexReg 4323). Specifically, the amendment to §21.2083 amends the definition of "low income school" to include high schools whose percentage of economically disadvantaged students is greater than or equal to the statewide average for the same year. The amendments to §21.2084 allow applicants to be considered eligible for participation if, in addition to meeting all other program requirements, they attended (or resided in an area near) a high school that was among the lowest 50 percent of Texas high schools with regard to sending students to college.

No comments were received regarding the amendments.

The amendments are adopted under the Texas Education Code, §56.091, which authorizes the Coordinating Board to establish and administer the Doctoral Incentive Loan Repayment Program and adopt rules as necessary.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 26, 2006.

TRD-200603941
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Effective date: August 15, 2006
Proposal publication date: May 26, 2006
For further information, please call: (512) 427-6114

♦ ♦ ♦

CHAPTER 22. GRANT AND SCHOLARSHIP PROGRAMS
SUBCHAPTER B. PROVISIONS FOR THE TUITION EQUALIZATION GRANT PROGRAM

19 TAC §22.27

The Texas Higher Education Coordinating Board adopts an amendment to §22.27, concerning the Tuition Equalization Grant Program, without changes to the proposed text as published in the May 26, 2006, issue of the *Texas Register* (31 TexReg 4324). Specifically, changes to Texas Education Code, §61.229, authorized the awarding of grants equal to 150 percent of the basic grant amount to students otherwise eligible for the Tuition Equalization Grant and who have exceptional financial

need. This amendment will clarify that this provision applies to all students, new and continuing, who are awarded Tuition Equalization Grants on or after September 1, 2005.

No comments were received regarding the amendment.

The amendment is adopted under the Texas Education Code, §61.229, which provides the Coordinating Board with the authority to adopt rules necessary to implement the Tuition Equalization Grant Program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 26, 2006.

TRD-200603942
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Effective date: August 15, 2006
Proposal publication date: May 26, 2006
For further information, please call: (512) 427-6114

♦ ♦ ♦

TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 412. LOCAL MENTAL HEALTH AUTHORITY RESPONSIBILITIES

SUBCHAPTER I. MENTAL HEALTH CASE MANAGEMENT SERVICES

25 TAC §§412.403, 412.405 - 412.408, 412.410 - 412.413, 412.415 - 412.417

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts amendments to §§412.403, 412.405 - 412.408, 412.410 - 412.413, and 412.415 - 412.417, concerning mental health case management services. The amendments to §§412.403, 412.406 - 412.408, and 412.412 are adopted with changes to the proposed text as published in the April 14, 2006, issue of the *Texas Register* (31 TexReg 3171). The amendments to §§412.405, 412.410, 412.411, 412.413, and 412.415 - 412.417 are adopted without changes and the sections will not be republished.

BACKGROUND AND PURPOSE

This subchapter describes requirements for the provision of mental health case management services (MH case management services) funded by or through the department.

The amendments include the addition of language that either better explains terms already included in the definitions, or adds newly defined terms, providing clarification for providers and others who are impacted by these rules.

Several new requirements are added to §412.411, relating to Staff Training. These additional requirements are intended to highlight and emphasize that case managers and case manager supervisors must not only comply with the provisions in this subsection, but also with standards and requirements found in other rules of the department. Such other rules include the requirements of Chapter 412, Subchapter G of this title (relating to Mental Health Community Services Standards), Chapter 404, Subchapter E of this title (relating to Rights of Persons Receiving Mental Health Services), and Chapter 414, Subchapter L of this title (relating to Abuse, Neglect, and Exploitation in Local Authorities and Community Centers).

Certain language is moved from §412.405, relating to Eligibility for MH Case Management Services, to §412.413, relating to Medicaid Reimbursement. These changes are to more accurately reflect that, although an individual may meet the basic eligibility criteria for MH case management services, circumstances sometimes exist in which those services are not reimbursable under Medicaid. Moving the language to the section concerning Medicaid reimbursement is intended to assist readers in understanding this distinction.

The amendments also remove all references to the Texas Department of Mental Health and Mental Retardation and replace them with the new agency name, the Department of State Health Services.

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 412.401 - 412.417 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed. Sections 412.401, 412.402, 412.404, 412.409 and 412.414 were opened for public comment in the proposed preamble without changes and are readopted without changes. No comments were received concerning these sections and they are readopted without changes.

SECTION-BY-SECTION SUMMARY

In addition to certain grammatical and formatting changes, as well as changing the references to the "Texas Department of Mental Health and Mental Retardation" to the "Department of State Health Services" in §412.403 and §412.417, the following amendments are adopted.

Amendments to §412.403 add language to the definition of "CSSP or community services specialist" to require the CSSP staff to possess demonstrated competency in the provision and documentation of case management services in accordance with the subchapter and with the case management billing guidelines. Amendments also add the following new definitions: "family partner", "intensive case management", "routine case management", and "strengths-based". Amendments were also made to the definitions of "department," "staff member," "uniform assessment", "utilization management guideline", and "wrap-around planning", for clarification and a better understanding of these terms as they are used in this subchapter. The definitions are renumbered to accommodate the additions.

Section 412.405, relating to Eligibility for MH Case Management Services, is amended by deleting subsection (b) and moving it to §412.413 of this title (relating to Medicaid Reimbursement), as it more accurately refers to the availability of Medicaid reimbursement than to eligibility for the services.

Section 412.406, relating to Establishing Type, Amount, and Duration of MH Case Management Services, is amended to require the department or its designee to notify the individual seeking services or the individual's legally authorized representative, not

later than seven business days after a determination has been made, whether a request for MH case management services has been authorized or denied. Sections 412.406 and 412.408, relating to Service Limitations, is amended by deleting references to the section title, "Exhibits", and replacing it with "Guidelines".

Section 412.407, relating to MH Case Management Services, is amended to clarify that an assessment of unmet needs involves discussing what those needs are with the individual, establishing time frames for meeting outcomes, explaining the availability of services and providing case management offsite if it is necessary to facilitate linkage to a needed service.

Section 412.410 is amended by grammatical changes only.

Section 412.411, relating to Staff Training, is amended by the addition of language requiring case managers and supervisors of case managers to receive training and demonstrate competency in the requirements of this subchapter, as well as the requirements of Chapter 412, Subchapter G of this title (relating to Mental Health Community Services Standards), Chapter 404, Subchapter E of this title (relating to Rights of Persons Receiving Mental Health Services), and Chapter 414, Subchapter L of this title (relating to Abuse, Neglect, and Exploitation in Local Authorities and Community Centers). The section is also amended to provide that case managers and case manager supervisors must receive training and demonstrate competency in developing and implementing a case management plan when providing intensive case management services to a child or adolescent.

Section 412.412, relating to Documentation of MH Case Management Services, is amended to reflect the expectation that not only are service provision events to be documented, but attempts to provide the service are expected to be documented as well by the case manager. Additionally, the section is amended to require the case manager to document referrals made and the disposition of those referrals.

Section 412.413, relating to Medicaid Reimbursement, is amended by the addition of language indicating that the department will not reimburse a provider for Medicaid MH case management services provided in excess of eight hours. The section is also amended by the addition of a new subsection (f), the text of which is being deleted from §412.405(b) of this title, relating to Eligibility for MH Case Management Services. This change is intended to clarify that the language more accurately refers to the availability of Medicaid reimbursement than to eligibility for the services, and to assist readers in better understanding the distinction between an individual's eligibility for services and a provider's ability to be reimbursed, under Medicaid, for providing those services.

Section 412.415 is renamed as "Guidelines". In addition, the text of the rule is amended by changing references to "exhibits" to "guidelines", and by correcting the department's address for purposes of obtaining copies of any of the guidelines.

Section 412.416 is amended by making corrections and additions to the rules referenced in the subchapter.

COMMENTS

The department, on behalf of the commission, has reviewed and prepared responses to the comments received regarding the proposed rules during the comment period, which the commission has reviewed and accepts. The commenters were individuals, associations, and/or groups, including the following: Advocacy, Inc., MHMR of Tarrant County, a consumer, and program staff. The commenters generally supported the rules, but some implicitly or explicitly suggested changes as discussed in the summary of comments.

Comment: Concerning §412.406(e)(4), one commenter requested that the time limit for consumer notification of eligibility determination be lengthened to 14 days.

Response: The commission agrees that providers need sufficient time to notify consumers of eligibility determinations, but the commission disagrees with the suggestion that 14 days is needed. In order to reduce the burden on the provider while ensuring that people who are seeking services are provided with eligibility notification in a timely manner, the rule has been changed to require that notification be provided to the consumer within seven business days.

Comment: Concerning §412.407(c), one commenter requested clarification of how Intensive Case Management differs from the "coordination services" described in 25 TAC, §419.459(c)(2).

Response: The commission disagrees that intensive mental health case management services needs further clarification. The "coordination services" set forth in 25 TAC, §419.459(c)(2) are a component service of Psychosocial Rehabilitation. As such, the rehabilitative "coordination services" have as their principle focus assisting the service recipient in learning the skills required to coordinate services for him or herself. In contrast, Intensive Case Management, as set forth in §412.407(c), is not a rehabilitative service and does not have a focus on the development of skills and abilities. Intensive case management is intended to ensure that recipients are effectively linked to services that are appropriate to the individual's needs. No change was made to the rule as a result of this comment.

Comment: Concerning §412.411, one commenter made the suggestion that case managers who are providing intensive case management services to a child or adolescent should have training in wraparound services.

Response: The commission agrees that such training is important and §412.411(a)(14) specifically requires that case managers who are providing services to children and adolescents receive training in the wraparound planning process that is approved by the department. No change was made to the rule as a result of this comment.

Comment: Concerning the rules in general, one commenter stated that the changes to the rules are positive changes that will provide the opportunity for more cost-effective recovery opportunities for consumers.

Response: The commission agrees with the commenter and notes that these services were specifically developed with a view toward maximizing recovery. No change was made to the rules as a result of this comment.

The department staff on behalf of the commission provided comments and the commission has reviewed and agrees to the following changes.

Change: Concerning §412.403(19), the word "are" was deleted after the word "but" to correct the grammar.

Change: Concerning §412.403(27), the definition of "staff member" was inadvertently changed to include "a volunteer" in the proposed rule, when the intent was to retain the original definition which excluded volunteers. The rule as proposed is being changed to correct this inadvertent error.

Change: Concerning §412.403(30), the verb "developed" was inadvertently omitted and has been inserted in the definition.

Change: Concerning §412.406(a), references to "Exhibits" were intended to be replaced with "Guidelines" in the proposed rule, but one such reference was not changed. This correction is being made to the rule, and paragraph numbers are added to the adopted cross-references for clarity.

Change: Concerning §412.407(c)(6), the word "process" was inadvertently left out of the term "wraparound process planning", and is being inserted.

Change: Concerning §412.408(b), the specific paragraph number is added to the cross-reference to §412.415 for of clarity.

Change: Concerning §412.412(a), changes are made in order to clarify that consistent documentation is required for services provided to individuals, whether through face-to-face contact or not. The subsection is renumbered to accommodate new and deleted text.

LEGAL CERTIFICATION

The Department of State Health Services, General Counsel, Cathy Campbell, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The adopted amendments are authorized by Health and Safety Code, §534.052, which requires the adoption of rules necessary and appropriate to ensure the adequate provision of community based mental health services through a local mental health authority; Health and Safety Code, §534.053, which requires the department to ensure that case management services are available in each local mental health authority service area; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

§412.403. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

(1) Adolescent--An individual who is at least 13 years of age, but younger than 18 years of age.

(2) Adult--An individual who is 18 years of age or older.

(3) Business day--Any day except a Saturday, Sunday, or legal holiday listed in the Texas Government Code, §662.021.

(4) Case manager--A staff member who provides MH case management services.

(5) Child--An individual who is at least three years of age, but younger than 13 years of age.

(6) Community-based--Provided in an individual's community.

(7) CMHC or community mental health center--An entity established in accordance with the Texas Health and Safety Code, §534.001, as a community mental health center or a community mental health and mental retardation center.

(8) CSSP or community services specialist--A staff member who, as of August 31, 2004:

(A) has received:

(i) a high school diploma; or

(ii) a high school equivalency certificate issued in accordance with the law of the issuing state; and

(B) has had three continuous years of documented full time experience in the provision of MH case management services; and

(C) has demonstrated competency in the provision and documentation of MH case management services in accordance with this subchapter and the MH Case Management Billing Guidelines.

(9) Crisis--A situation in which:

(A) because of a mental health condition:

(i) the individual presents an immediate danger to self or others: or

(ii) the individual's mental or physical health is at risk of serious deterioration; or

(B) an individual believes that he or she presents an immediate danger to self or others or that his or her mental or physical health is at risk of serious deterioration.

(10) Day--A calendar day, unless otherwise specified.

(11) Department--Department of State Health Services.

(12) Employee--A staff member who receives a W2 Wage and Tax Statement from a provider.

(13) Family partner--Experienced parent (i.e. parent of an individual with a serious emotional disturbance) who provides peer mentoring, education, and support to the caregivers of a child who is receiving mental health community services.

(14) Individual--A person seeking or receiving MH case management services.

(15) IMD or institution for mental diseases--Based on 42 CFR §435.1009, a hospital, nursing facility, or other institution of more than 16 beds that is primarily engaged in providing psychiatric diagnosis, treatment, or care of individuals with mental illness, including medical attention, nursing care, and related services.

(16) Intensive case management--In conjunction with wraparound process planning, this is a focused intervention of coordinating community-based services that assist a child or adolescent in gaining access to necessary care and services appropriate to the individual's needs. It also includes monitoring service effectiveness and proactive crisis planning and management.

(17) LAR or legally authorized representative--A person authorized by law to act on behalf of a child or adolescent with regard to a matter described in this subchapter, and who may be a parent, guardian, or managing conservator.

(18) LOC or level of care--A designation given to the department's standardized packages of mental health services, based on the uniform assessment and the utilization management guidelines, which specify the type, amount, and duration of MH case management services to be provided to an individual.

(19) Life domains--Areas of life in which a child or adolescent has unmet needs, including but not limited to safety, health, emotional, psychological, social, educational, cultural, and legal.

(20) MH case management plan--A written document developed by a case manager, in collaboration with the individual and the individual's LAR or primary caregiver, that identifies services needed

by the individual and sets forth a plan for how the individual may gain access to the identified services.

(21) Mental health (MH) case management services--Services to assist an individual in gaining and coordinating access to necessary care and services appropriate to the individual's needs.

(22) Primary caregiver--A person 18 years of age or older who has actual care, control, and possession of a child or adolescent.

(23) Provider--An entity that has an agreement with the department to provide general revenue-funded MH case management services, Medicaid-funded MH case management services, or both.

(24) QMHP-CS or qualified mental health professional-community services--A staff member who meets the definition of a QMHP-CS set forth in Subchapter G of this chapter (relating to Mental Health Services Standards).

(25) Routine case management--Primarily site-based services that assist an adult, child or adolescent in gaining and coordinating access to necessary care and services appropriate to the individual's needs.

(26) Site-based--Provided at a case manager's work site.

(27) Staff member--Personnel of a provider including a full-time and part-time employee, contractor, intern, but excluding a volunteer.

(28) Strengths-based--Concept used in wraparound planning that identifies, builds on and enhances the capabilities, knowledge, skills and assets of the child and family, their community, and other team members. The focus is on increasing functional strengths and assets rather than on the elimination of deficits.

(29) Uniform assessment--An assessment tool adopted by the department that includes the Adult Texas Recommended Assessment Guidelines, the Texas Implementation of Medication Algorithms scales for adults, and the Children and Adolescent Texas Recommended Assessment Guidelines.

(30) Utilization management guidelines--Guidelines developed by the department that establish the type, amount, and duration of MH case management services for each LOC.

(31) Wraparound process planning--A philosophy of care that includes a definable planning process involving the child and family that results in a unique set of community services and natural supports individualized for that child and family to achieve a positive set of outcomes. Wraparound process planning is for a child or adolescent:

(A) with serious emotional disturbance;

(B) who has multiple, complex needs;

(C) who may have placement issues; and

(D) who is authorized for a LOC inclusive of intensive case management.

§412.406. Establishing Type, Amount, and Duration of MH Case Management Services.

(a) The department or its designee will make the initial determination of an individual's LOC using the uniform assessment which is referenced in §412.415(1) of this title (relating to Guidelines); and the utilization management guidelines which are referenced in §412.415(2) of this title. If the LOC includes MH case management services, the department or its designee will authorize the individual to receive either routine or intensive MH case management services.

(b) A provider must:

(1) ensure that a QMHP-CS administers the uniform assessment to the individual at intervals specified by the department and applies the utilization management guidelines to obtain a recommended LOC for the individual; and

(2) clinically evaluate the needs of the individual to determine if the amount of MH case management services associated with the recommended LOC is sufficient to meet those needs.

(c) If the provider determines that the amount of MH case management services associated with the recommended LOC is sufficient to meet the individual's needs, the provider must submit to the department or its designee a request for service authorization in accordance with the recommended LOC.

(d) If the provider determines that the amount of MH case management services associated with the recommended LOC is not sufficient to meet the individual's needs, the provider must submit to the department or its designee:

(1) a request for an authorization of an LOC that is sufficient to meet the individual's need or a request for authorization of additional units of service; and

(2) clinical justification for the request.

(e) Upon receipt of a request submitted in accordance with subsection (c) or (d) of this section, the department or its designee will:

(1) review the documentation submitted by the provider;

(2) based on the review of documentation and an evaluation of available resources, authorize or deny an LOC for the individual, and if authorized, it will authorize the individual to receive either routine or intensive MH case management services;

(3) if applicable, authorize or deny a request for additional units of service; and

(4) communicate to the individual or LAR, no longer than 7 business days after the determination has been made, whether the service has been authorized or denied.

§412.407. MH Case Management Services.

(a) MH case management services assist an individual in gaining and coordinating access to necessary care and services appropriate to the individual's needs. There are two types of MH case management services:

(1) routine MH case management, for an adult, a child, or adolescent, which is primarily site-based; and

(2) intensive MH case management, for a child or adolescent, which is primarily community-based.

(b) A case manager assigned to an individual who is authorized to receive routine MH case management services must:

(1) meet face-to-face with the individual, and the individual's LAR or primary caregiver if individual is a child or adolescent, within 14 days after the case manager is assigned to the individual in accordance with §412.404(c) of this title (relating to Provider Requirements), or document why the meeting did not occur;

(2) meet face-to-face with the individual upon the request of the individual, the LAR, or the primary caregiver at the case manager's work site or document why the meeting did not occur;

(3) assist the individual in identifying the individual's immediate need in gaining access to a community resource that may address that need;

(4) document the identified need and the assistance given to address the identified need; and

(5) if notified that the individual is in crisis, coordinate with the appropriate providers of emergency services to respond to the crisis, as described in §412.314 of this title (relating to Crisis Services).

(c) A case manager assigned to an individual who is authorized to receive intensive MH case management services must:

(1) meet face-to-face with the individual and the individual's LAR or primary caregiver within seven days after the case manager is assigned to the individual or within seven days after discharge from an inpatient psychiatric setting, whichever is later, or document the reasons the meeting did not occur;

(2) meet face-to-face with the individual and the individual's LAR or primary caregiver in accordance with the individual's MH case management plan or document why the meeting did not occur;

(3) meet face-to-face with the individual and the individual's LAR or primary caregiver upon notification of a clinically significant change in the individual's functioning, life status, or service needs or document why the meeting did not occur;

(4) meet face-to-face with the individual and the individual's LAR or primary caregiver at the request of the individual, the LAR, or primary caregiver or document why the meeting did not occur;

(5) gather information about the individual's strengths and service needs across life domains from relevant sources, including:

(A) the individual;

(B) the individual's LAR or primary caregiver;

(C) other agencies and organizations providing services to the individual;

(D) the individual's clinical record; and

(E) other sources identified by the individual or LAR or primary caregiver;

(6) utilize wraparound process planning to develop an MH case management plan that addresses the individual's unmet needs across life domains and that includes:

(A) a prioritized list of the individual's unmet needs which includes a discussion of the priorities and needs expressed by the individual and the individual's LAR;

(B) a description of the objective and measurable outcomes for each of the unmet needs as well as a projected time frame for each outcome;

(C) a description of the actions the individual, the case manager, and other designated people will take to achieve those outcomes;

(D) a list of the necessary services and service providers and the availability of the services;

(E) a description of the MH case management services to be provided by the case manager; and

(F) a statement of the maximum period of time between face-to-face contacts with the individual, and the individual's LAR or primary caregiver, determined in accordance with the utilization management guidelines;

(7) assist the individual in gaining access to the needed services and service providers including:

(A) making referrals to potential service providers;

(B) initiating contact with potential service providers;

(C) arranging, and if necessary to facilitate linkage, accompanying the individual to initial meetings and non-routine appointments;

(D) arranging transportation to ensure the individual's attendance;

(E) advocating with service providers; and

(F) providing relevant information to service providers;

(8) monitor the individual's progress toward the outcomes set forth in the MH case management plan including;

(A) gathering information from the individual, current service providers, and other resources;

(B) reviewing pertinent documentation, including the individual's clinical records, and assessments;

(C) ensuring the MH case management plan was implemented as agreed upon;

(D) ensuring needed services were provided;

(E) determining if progress toward the desired outcomes was made;

(F) identifying barriers to accessing services or to obtaining maximum benefit from services;

(G) advocating for the modification of services to address changes in the needs or status of the individual;

(H) identifying emerging unmet service needs;

(I) determining if the MH case management plan needs to be modified to address the individual's unmet service needs more adequately; and

(J) revising the MH case management plan as necessary to address the individual's unmet service needs;

(9) upon notification that the individual is in crisis, coordinate with the appropriate providers of emergency services to respond to the crisis, as described in §412.314 of this title; and

(10) recognize that the LAR is authorized to act on behalf of the child or adolescent.

(d) A case manager must notify an individual in writing of the process for making a complaint to the client rights officers of the provider and the department if the individual expresses dissatisfaction with:

(1) scheduling meetings with the case manager; or

(2) his or her MH case management plan or the treatment planning process.

§412.408. Service Limitations.

(a) A case manager may not provide MH case management services to his or her child, parent, spouse, mother-in-law, father-in-law, son-in-law, daughter-in-law, stepchild, stepparent, grandchild, or sibling.

(b) Activities that do not constitute MH case management services are identified in the department's MH Case Management Services Billing Guidelines, referenced in §412.415(3) of this title (relating to Guidelines).

§412.412. Documentation of MH Case Management Services.

(a) A case manager must document the provision of MH case management services, as well as attempts to provide MH case management services, as follows:

(1) if the service involves face-to-face contact with the individual, document:

(A) the date of the contact;

(B) start and stop time of the contact;

(C) a description of the MH case management service provided;

(D) the individual's response to the services being provided;

(E) if the individual is receiving intensive MH case management services, the progress or lack of progress in addressing the individual's outcomes as identified in the MH case management plan; and

(F) the case manager's signature and credentials of QMHP-CS or CSSP;

(2) if the service does not involve face-to-face contact with the individual, document:

(A) the date(s) of the contact;

(B) a description of the MH case management service provided;

(C) the case manager's signature and credentials of QMHP-CS or CSSP;

(3) if the service involves face-to-face or telephone contact with someone other than the individual, document:

(A) the date of the contact;

(B) the person with whom the contact was made;

(C) a description of the MH Case management service provided;

(D) the outcome of the service; and

(E) the case manager's signature and credentials of QMHP-CS or CSSP.

(4) A case manager must document referrals made and the disposition of each referral.

(b) The provider must retain documentation in compliance with applicable federal and state laws, rules, and regulations.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 28, 2006.

TRD-200603977
Cathy Campbell
General Counsel
Department of State Health Services
Effective date: September 1, 2006
Proposal publication date: April 14, 2006
For further information, please call: (512) 458-7111 x6972

CHAPTER 419. MENTAL HEALTH SERVICES--MEDICAID STATE OPERATING AGENCY RESPONSIBILITIES

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts amendments to §§419.451 - 419.459 and 419.461 - 419.470, and the repeal of §419.460, concerning Rehabilitative Counseling and Psychotherapy. The amendments to §§419.453, 419.454, 419.457, 419.465, and 419.469 are adopted with changes to the proposed text as published in the April 14, 2006, issue of the *Texas Register* (31 TexReg 3177). The amendments to §§419.451, 419.452, 419.455, 419.456, 419.458, 419.459, 419.461 - 419.464, 419.466 - 419.468, 419.470, and the repeal of §419.460 are adopted without changes and the sections will not be republished.

BACKGROUND AND PURPOSE

This subchapter describes requirements for the provision of mental health rehabilitative services. During the 79th Texas legislative session, the legislature appropriated funds to restore the general counseling benefit to all Medicaid recipients, resulting in an amendment to the Medicaid State Plan. Due to the restoration of the general counseling benefit to all Medicaid recipients, the adopted amendments and repeal include the repeal of §419.460 of this title (relating to Rehabilitative Counseling and Psychotherapy), thus removing the rehabilitative counseling and psychotherapy benefit from the array of rehabilitative services. This change will avoid any duplication of the service that could result in double billing by providers.

Amendments include removal of the word "Medicaid" from the title of the subchapter and from various provisions throughout the affected sections, to reflect that the subchapter applies to all mental health (MH) rehabilitative services, not just Medicaid rehabilitative services. In addition, throughout the rules, all references to the department are changed from the "Texas Department of Mental Health and Mental Retardation" to the "Department of State Health Services".

Another change is the addition of skills training and development in a group modality (as opposed to one-to-one), to reflect the current understanding, described in recently published scientific literature, that providing this service in a group modality is effective in treating children and adolescents.

Certain language is moved from §419.455, relating to Eligibility, to §419.465, relating to Medicaid Reimbursement. These changes more accurately reflect the fact that, although an individual may meet the basic eligibility criteria for MH Rehabilitative Services, circumstances sometimes exist in which those services are not reimbursable under Medicaid. Moving the language to the section concerning Medicaid reimbursement is intended to clarify this distinction.

The amendments also require that psychosocial rehabilitative services be provided by members of a clearly defined therapeutic team, and the role and function of that team is described. New language is also adopted to better define and clarify the components of "coordination services," as that term is used in this subchapter.

Additionally, Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government

Code, Chapter 2001 (Administrative Procedure Act). Sections 419.451-419.470 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed with the exception of §419.460, which is being repealed, as it is no longer necessary.

SECTION-BY-SECTION SUMMARY

Certain grammatical and formatting changes have been made throughout the rules, as well as removal of the word, "Medicaid," from §§419.451-419.456, 419.458, 419.459, 419.461-419.467, and 419.470. References in §419.453 to the Texas Department of Mental Health and Mental Retardation (TDMHMR), and in §419.468 to the division of Behavioral Health Services, are changed to the Department of State Health Services. A reference in §419.470 to TDMHMR or the applicable council is changed to the State Health Services Council. In addition to these changes, the following amendments are adopted.

Section 419.453, relating to Definitions, is amended by revising the definition of the term, "Medicaid provider". A separate definition of the term, "provider", is added as a newly defined term. Also, within the definition of "MH rehabilitative services", the term, "psychosocial rehabilitation services", is changed to "psychosocial rehabilitative services". In addition, the definition of "MH rehabilitative services" is amended by deleting rehabilitative counseling and psychotherapy from the list of enumerated services that are within the array of available rehabilitative services as a result of the restoration of the general counseling benefit to all Medicaid recipients.

Also in §419.453, the definition of "peer provider" is amended by changing the requirement that a peer provider has at least one cumulative year of receiving mental health services "from or through the department" to a requirement that the person has at least one cumulative year of receiving mental health services "for a disorder that is treated in the target population for Texas". This change recognizes that a person may qualify to serve as a peer provider as a result of receiving mental health services outside of Texas, as long as they were treated for a disorder that falls within the target population for Texas. The definition of "peer provider" is also amended by removing the requirement that the person "has demonstrated competency in the provision and documentation of Medicaid MH rehabilitative services in accordance with this subchapter and the Medicaid MH Rehabilitative Services Billing Guidelines". This requirement is deleted because it would not be realistic to expect that an individual who is otherwise qualified to serve as a peer provider would be in a position to demonstrate such competence without having first served as a peer provider or in some other capacity as a provider of MH rehabilitative services. Such a requirement would in most, if not all, instances prevent an individual from ever qualifying to serve as a peer provider.

Amendments to §419.455, relating to Eligibility, include the renumbering of paragraph (1) of this section and the deletion of text which is moved to §419.465 of this title (relating to Medicaid Reimbursement) to more accurately refer to the availability of Medicaid reimbursement rather than to eligibility for the service.

Amendments to §419.456, relating to Service Authorization and Treatment Plan, include the addition of language in subsection (b)(1)(B) of that section, to require that the medical necessity of crisis intervention services be documented. Also, subsection (d)(2) is amended by adding language to require that, at the time a treatment plan is reviewed, the provider must solicit input from the individual, or from the legally authorized representative (LAR) or primary caregiver of a child or adolescent, regarding the services received to date and whether the services received have led to improvement and/or if there are other services to address unmet needs. This new language replaces language currently in the rule, which is less specific and requires only that input be solicited regarding satisfaction with the services provided. The new language recognizes that while there may be satisfaction with a particular service, it does not mean that the individual or the individual's LAR or primary caregiver believes that the individual's needs have been fully met.

Section 419.457, relating to Crisis Intervention Services, is amended to clarify that the rehabilitative counseling and psychotherapy benefit has been removed from the array of rehabilitative services. The publication of proposed amendments reflected the intent to delete subsection (a)(6) in order to avoid confusion. As discussed under the "comments" section of this preamble, department staff determined that the potential for confusion could be eliminated by changing the word "guidance", which was thought to imply counseling, rather than deleting the entire subsection.

Section 419.458, relating to Medication Training and Support Services, is amended by the addition of language clarifying that medication training and support services consists of instruction and guidance based on curricula promulgated by the department, including the patient/family education program guidelines referenced in §419.468(3) of this title (relating to Guidelines).

Amendments to §419.459 include changing the name of the title to Psychosocial Rehabilitative Services, and changing all references to psychosocial rehabilitation services to psychosocial rehabilitative services. In addition, subsection (b)(1) is amended to require that psychosocial rehabilitative services must be provided by members of a clearly defined therapeutic team, and the role and function of that team is described. Subsection (b)(3) is also amended to require that the therapeutic team be constituted and organized in a manner that ensures that "every member of the team is knowledgeable of the needs and of the services available to the specific individuals assigned to the team". Finally, amendments to subsection (c)(2) more fully describe and clarify the components of "coordination services", as that term is used in this subchapter.

Section 419.460, relating to Rehabilitative Counseling and Psychotherapy, is repealed because the general rehabilitative counseling and psychotherapy service was restored as a benefit to Medicaid recipients, effective December 1, 2005.

Amendments to §419.461, relating to Skills Training and Development Services, include the deletion of subsection (b)(3) and (4) of this section, which now allows providers to provide skills training and development to a child or adolescent in a group setting. The section is also amended by the addition of language indicating that skills training and development services may be provided to an adult, child, adolescent, LAR, or primary caregiver of a child or adolescent. The section is also amended by the deletion of subsection (b)(9) of this section, which requires that skills training and development services provided to an LAR or primary caregiver of a child or adolescent must be provided by either a qualified mental health professional-community service (QMHP-CS) or a community services specialist (CSSP).

Section 419.462, relating to Day Programs for Acute Needs, is amended to include the addition of a new component of symptom management training, which involves providing assistance and

training to individuals in recognizing and reducing their symptoms. The new component involves training in ways to avoid symptomatic episodes.

Section 419.463(a)(7), relating to Documentation Requirements, is amended to remove the reference to LPHA because the service that required an LPHA, Rehabilitative Counseling and Psychotherapy, has been removed.

Adopted amendments to §419.464, relating to Staff Member Training, include the addition of language to subsection (a)(2)(B) of this section, clarifying that staff must be trained on skills training curricula that has been reviewed and approved by the department.

Amendments to §419.465, relating to Medicaid Reimbursement, clarify that a provider may only bill for medically necessary services to Medicaid-eligible individuals, and further clarify that with the exception of crisis intervention services and psychosocial rehabilitative services provided in a crisis situation, the department will not reimburse a Medicaid provider for any combination of MH rehabilitative services delivered in excess of 8 hours per individual per day. The amended rule clarifies that crisis services must be provided to the individual until the crisis is resolved. The section is also amended by the addition of language that is being deleted from §419.455 of this title (relating to Eligibility), as it more accurately refers to the availability of Medicaid reimbursement than to eligibility for the services.

Section 419.468 is renamed as "Guidelines". In addition, the text of the rule is amended by changing references to "exhibits" to "guidelines", and by correcting the department's address for purposes of obtaining copies of any of the guidelines.

Section 419.469, relating to References, is amended by making corrections and additions to the rules referenced in the subchapter.

Section 419.470, relating to Distribution, includes the addition of language requiring distribution of this subchapter to the members of the State Health Services Council, and also requiring it be made available by the chief executive officer of each provider to all staff members who deliver MH rehabilitative services.

COMMENTS

The department, on behalf of the commission, has reviewed and prepared responses to the comments received regarding the proposed rules during the comment period, which the commission has reviewed and accepts. The commenters were individuals, associations, and/or groups, including Advocacy, Inc., Central Counties Center for MHMR, and MHMR of Tarrant County. The commenters generally supported the rules, but some implicitly or explicitly suggested changes as discussed in the summary of comments.

Comment: Concerning §419.456, one commenter expressed support for consumers having a say in their treatment, and that "treatment planning should be directed by consumer need and choice".

Response: The commission agrees that consumers should have a say in their treatment, and notes that §419.456(a)(1)(B) specifically requires treatment plans be developed in collaboration with the person receiving the services. No change was made to the rule as a result of this comment.

Comment: Concerning §419.458, one commenter noted that the rule requires rehabilitative Medication Training and Support Services to be based on curricula promulgated by the department or other departmentally approved materials. The commenter asked where instructions on assisting an individual in learning self-administration of medication are found in these materials.

Response: The commission notes that materials related to this question can be found in Session III of the education groups set forth in the Peer Facilitator Guide at the following URL: www.dshs.state.tx.us/mhprograms/PtEd.shtm. No change was made to the rule as a result of this comment.

Comment: Concerning §419.459(c)(2), one commenter requested clarification of how "coordination services" differs from Intensive Case Management, as described in 25 TAC, §412.407(c).

Response: The commission disagrees that the terms need further clarification in the rules and points out that "coordination services", referenced in §419.459(c)(2), are a component service of Psychosocial Rehabilitation. As such, the rehabilitative "coordination services" have as their principle focus assisting the service recipient in learning the skills required to coordinate services for him or herself. In contrast, Intensive Case Management, as set forth in 25 TAC, §412.407(c), is not a rehabilitative service and does not have a focus on the development of skills and abilities. Intensive case management is intended to ensure that recipients are effectively linked to services that are appropriate to the individual's needs. No change was made to the rule as a result of this comment.

Comment: Concerning the rules in general, one commenter generally noted that there is nothing in the Mental Health Rehabilitative Services rules that specifies the services to be provided to children and adolescents, and suggested that such services needed to be defined in the rules. The commenter indicated that the state is obligated to provide Medicaid eligible children with all medically necessary covered services determined necessary to treat their medical condition. The commenter stated that all medically necessary services for children that are listed in the department's Resiliency and Disease Management packages for children and adolescents should be set forth in the rule.

Response: The commission disagrees with the commenter, noting that the purpose of the rule subchapter is to describe the requirements for the provision of mental health rehabilitative services provided by entities that contract with the department. For each type of service described, the rules specify which services are considered to be clinically appropriate for adults, children and adolescents. A complete listing of all services that may be determined medically necessary and, therefore, available to Medicaid-eligible children and adolescents goes beyond the scope and purpose of this rule subchapter. No changes were made to the rules as a result of this comment.

Comment: Concerning the rules in general, one commenter generally noted about the rules in the subchapter that peer supports have resulted in positive outcomes and recommended the continuation of peer support and consumer driven services.

Response: The commission agrees with the commenter and points out that the rules maintain the option for the delivery of certain services by peer providers and also broaden the definition of peer provider in such a way as to allow individuals who have received services in other systems of care to also be included. No changes were made to the rules as a result of this comment.

Comment: Concerning the rules in general, one commenter stated that the changes to the rules are positive and will provide

the opportunity for more cost-effective recovery opportunities for consumers. The commenter also noted that these changes will increase consumer choice and allow more consumers to be served.

Response: The commission agrees with the commenter and notes that these services were specifically developed with a view toward maximizing recovery and improving the efficiency of service delivery. No changes were made to the rules as a result of this comment.

The following changes were made as a result of comments from department staff to provide greater clarity to the rules.

Change: Concerning §419.453(16), language is added to clarify that the size of groups comprised of LARs and/or primary caregivers are limited to the same numbers as groups for children and adolescents.

Change: Concerning §419.453(39), language is added to clarify that Medicaid providers are also included within the definition.

Change: Concerning §419.453(43), deletion of the term "Medicaid" was inadvertently overlooked in the proposed rules. This term is being deleted to clarify that the definition of "Staff member" applies to all providers covered by this subchapter.

Change: Concerning §419.454(a), an error in the subsection's number of a cross-reference is corrected from §412.304(a)(4) to §412.304(a)(5).

Change: Concerning §419.457(a)(6), the entire subsection was proposed for deletion in the publication of proposed amendments under the mistaken belief that it was necessary to be consistent with the deletion of §419.460, relating to Rehabilitative Counseling and Psychotherapy, and to avoid any potential for confusion. After further consideration by department staff, the proposed deletion of this entire subsection is determined to be unnecessary, because any potential for confusion is remedied simply by changing the word "guidance" to "instruction".

Change: Concerning §419.465(b)(1), the words "combination of" that preceded "MH rehabilitative services" are deleted as unnecessary and to add clarity to the rule.

Change: Concerning §419.465(b)(1)(E), the subparagraph was divided into two subparagraphs, (E) and a new (F), for clarity.

Change: Concerning §419.469(13), it is amended to reflect the correct name of the cross-referenced rule.

LEGAL CERTIFICATION

The Department of State Health Services, General Counsel, Cathy Campbell, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

SUBCHAPTER L. MENTAL HEALTH REHABILITATIVE SERVICES

25 TAC §§419.451 - 419.459, 419.461 - 419.470

STATUTORY AUTHORITY

The adopted amendments are authorized by Health and Safety Code, §534.052, which requires the adoption of rules necessary and appropriate to ensure the adequate provision of community based mental health services through a local mental health authority; Health and Safety Code, §534.053, which requires the department to ensure that psychosocial rehabilitation programs are available in each local mental health authority service area; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

§419.453. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

(1) Adolescent--An individual who is at least 13 years of age, but younger than 18 years of age.

(2) Adult--An individual who is 18 years of age or older.

(3) Advanced practice nurse--A staff member who is a registered nurse approved by the Texas State Board of Nurse Examiners to practice as an advanced practice nurse, in accordance with Texas Occupations Code, Chapter 301. The term is synonymous with "advanced nurse practitioner."

(4) Arrangement--A contract between a provider and a person or entity for the provision of MH rehabilitative services.

(5) Authorization period--The duration for which the provider has obtained authorization in accordance with §419.456(a) of this title (relating to Service Authorization and Treatment Plan).

(6) Business day--Any day except a Saturday, Sunday, or legal holiday listed in Texas Government Code, §662.021.

(7) CFR--The Code of Federal Regulations.

(8) Child--An individual who is at least three years of age, but younger than 13 years of age.

(9) Crisis--A situation in which:

(A) because of a mental health condition:

(i) an individual presents an immediate danger to self or others; or

(ii) an individual's mental or physical health is at risk of serious deterioration; or

(B) an individual believes that he or she presents an immediate danger to self or others or that his or her mental or physical health is at risk of serious deterioration.

(10) CSSP or community services specialist--A staff member who, as of August 30, 2004:

(A) has received:

(i) a high school diploma; or

(ii) a high school equivalency certificate issued in accordance with the law of the issuing state;

(B) has had three continuous years of documented full-time experience in the provision of MH rehabilitative services; and

(C) has demonstrated competency in the provision and documentation of MH rehabilitative services in accordance with this subchapter and the MH Rehabilitative Services Billing Guidelines.

(11) CSU or crisis stabilization unit--A crisis stabilization unit licensed under Chapter 577, of the Texas Health and Safety Code and Chapter 134 of this title (relating to Private Psychiatric Hospitals and Crisis Stabilization Units).

(12) Day--Calendar day, unless otherwise specified.

(13) Department--Department of State Health Services.

(14) Direct clinical supervision--An LPHA's interaction with a peer provider to ensure that MH rehabilitative services provided by the peer provider are clinically appropriate and in compliance with this subchapter by:

(A) conducting a documented face-to-face meeting with the peer provider at regularly scheduled intervals; and

(B) conducting, at least monthly, a documented face-to-face observation of the peer provider providing MH rehabilitative services.

(15) Face-to-face--Within the physical presence of another person.

(16) Group--A service delivery modality involving two to eight individuals (for adults), or two to six individuals (for children and adolescents or their legally authorized representatives (LARs) or primary caregivers), and at least one staff member.

(17) IMD or institution for mental diseases--Based on 42 CFR §435.1009, a hospital, nursing facility, or other institution of more than 16 beds that is primarily engaged in providing diagnosis, treatment, or care of individuals with mental illness, including medical attention, nursing care, and related services.

(18) Individual--A person seeking or receiving MH rehabilitative services.

(19) In-vivo--The individual's natural environment (e.g., the individual's residence, work place, or school).

(20) LAR or legally authorized representative--A person authorized by law to act on behalf of a child or adolescent with regard to a matter described in this subchapter, and who may be a parent, guardian, or managing conservator.

(21) Licensed marriage and family therapist--An individual who is licensed as a licensed marriage and family therapist by the Texas State Board of Examiners of Marriage and Family Therapists in accordance with Texas Occupations Code, Chapter 502.

(22) Licensed medical personnel--A staff member who is:

(A) a physician;

(B) a physician assistant;

(C) an RN;

(D) an LVN; or

(E) a pharmacist.

(23) Licensed professional counselor--A person who is licensed as a licensed professional counselor by the Texas State Board of Examiners of Professional Counselors in accordance with Texas Occupations Code, Chapter 503.

(24) LOC or level of care--A designation given to the department's standardized packages of MH rehabilitative services, based on the uniform assessment and utilization management guidelines referenced in §419.468 of this title (relating to Guidelines), which specify the type, amount, and duration of MH rehabilitative services to be provided to an individual.

(25) LPHA or licensed practitioner of the healing arts--A staff member who is:

(A) a physician;

(B) a licensed professional counselor;

(C) a licensed clinical social worker (formally a licensed master social worker-advanced clinical practitioner) as determined by the Texas State Board of Social Work Examiners in accordance with Texas Occupations Code, Chapter 505;

(D) a psychologist;

(E) an advanced practice nurse recognized by the Board of Nurse Examiners for the State of Texas as a clinical nurse specialist in psych/mental health or nurse practitioner in psych/mental health; or

(F) a licensed marriage and family therapist.

(26) LVN or vocational nurse--A person who is licensed as a vocational nurse by the Texas Board of Nurse Examiners in accordance with Texas Occupations Code, Chapter 301 or, prior to February 1, 2004, was licensed as a licensed vocational nurse by the Texas Board of Nurse Examiners in accordance with Texas Occupations Code, Chapter 302, and whose license has not yet expired.

(27) Master's level professional--A staff member who has completed a master's degree that is a prerequisite for licensure as one of the professionals listed in the definition of LPHA and is actively pursuing such licensure.

(28) Mental health (MH) rehabilitative services--Services that:

(A) are individualized age-appropriate training and instructional guidance that address an individual's functional deficits due to severe and persistent mental illness or serious emotional disturbance;

(B) are designed to improve or maintain the individual's ability to remain in the community as a fully integrated and functioning member of that community; and

(C) consist of the following services:

(i) crisis intervention services;

(ii) medication training and support services;

(iii) psychosocial rehabilitative services which consist of the following component services:

(I) independent living services;

(II) coordination services;

(III) employment related services;

(IV) housing related services;

(V) medication related services; and

(VI) crisis related services;

(iv) skills training and development services; and

(v) day programs for acute needs which consist of the following component services;

(I) psychiatric nursing services;

(II) pharmacological instruction;

(III) symptom management training; and

(IV) functional skills training.

(29) Medicaid provider--A Medicaid-enrolled provider with which the department has a Medicaid provider agreement to provide MH rehabilitative services under the State's Medicaid Program.

(30) Medical necessity--The need for a service that:

(A) is reasonable and necessary for the diagnosis or treatment of a mental health disorder or a mental health and substance use disorder in order to improve or maintain an individual's level of functioning;

(B) is in accordance with professionally accepted clinical guidelines and standards of practice in behavioral health care;

(C) is furnished in the most appropriate and least restrictive setting in which the service can be safely provided;

(D) is provided at a level that is safe and appropriate for the individual's needs and facilitates the individual's recovery; and

(E) could not be omitted without adversely affecting the individual's mental or physical health or the quality of care rendered.

(31) Nursing services--Services provided or delegated by an RN acting within the scope of his or her practice, as described in Texas Occupations Code, Chapter 301.

(32) On-site--A location operated by a provider or a person or entity under arrangement with the provider at which MH rehabilitative services are provided, such as a clinic, clubhouse, or office.

(33) Peer provider--A staff member who:

(A) has received:

(i) a high school diploma; or

(ii) a high school equivalency certificate issued in accordance with the law of the issuing state;

(B) has at least one cumulative year of receiving mental health services for a disorder that is treated in the target population for Texas; and

(C) is under the direct clinical supervision of an LPHA.

(34) Pharmacist--A person who is licensed as a pharmacist by the Texas State Board of Pharmacy in accordance with Texas Occupations Code, Chapter 558.

(35) Physician--A staff member who is:

(A) licensed as a physician by the Texas State Board of Medical Examiners in accordance with Texas Occupations Code, Chapter 155 (medical doctor or doctor of osteopathy); or

(B) authorized to perform medical acts under an institutional permit at a Texas postgraduate training program approved by the Accreditation Council on Graduate Medical Education, the American Osteopathic Association, or the Texas State Board of Medical Examiners.

(36) Physician assistant--A person who is licensed as a physician assistant by the Texas State Board of Physician Assistant Examiners in accordance with Texas Occupations Code, Chapter 204.

(37) Primary caregiver--A person 18 years of age or older who has actual care, control, and possession of a child or adolescent.

(38) Problem-solving--The use of specific steps and strategies to analyze and evaluate a problematic situation in order to determine a course of action to resolve the problematic situation.

(39) Provider--An entity with which the department has a contractual agreement for the provision of MH Rehabilitative Services, including a Medicaid provider.

(40) Psychologist--A person who is licensed as a psychologist by the Texas State Board of Examiners of Psychologists in accordance with Texas Occupations Code, Chapter 501.

(41) QMHP-CS or qualified mental health professional-community services--A staff member who meets the definition of a QMHP-CS set forth in Chapter 412, Subchapter G of this title (relating to Mental Health Community Services Standards).

(42) RN or registered nurse--A staff member who is licensed as a registered nurse by the Texas State Board of Nurse Examiners in accordance with Texas Occupations Code, Chapter 301.

(43) Staff member--Personnel of a provider including a full-time and part-time employee, contractor, intern, and a volunteer.

(44) Therapeutic team--A group of staff members who work together in a coordinated manner for the purpose of providing comprehensive mental health services to an individual.

(45) Uniform assessment--An assessment tool adopted by the department that includes the Adult Texas Recommended Assessment Guidelines, the Texas Implementation of Medication Algorithms Scales for Adults, and the Children and Adolescent Texas Recommended Assessment Guidelines.

(46) Utilization management guidelines--Guidelines developed by the department that establish the type, amount, and duration of MH rehabilitative services for each LOC.

§419.454. General Requirements for Providers of MH Rehabilitative Services.

(a) Compliance with MH community standards. In addition to complying with this subchapter, a provider must also comply with Chapter 412, Subchapter G of this title (relating to Mental Health Community Services Standards) in the provision of MH rehabilitative services, as described in §412.304(a)(5) and (b)(4) of this title (relating to Responsibility for Compliance).

(b) Staff supervision and oversight. A provider must develop policies and procedures for the supervision and oversight of CSSPs and peer providers.

(c) Service provision under arrangement.

(1) A provider may choose to have any MH rehabilitative service provided by a person or entity under arrangement.

(2) A provider must ensure that if MH rehabilitative services are provided under arrangement, then the person or entity delivering the MH rehabilitative services under arrangement complies with all applicable federal and state laws, rules, and regulations, and any provider manuals and policy clarification letters promulgated by the department.

(d) Prohibitions against discrimination and retaliation.

(1) A provider may not discriminate against an individual based on race, color, national origin, religion, sex, age, disability, co-occurring disorder or political affiliation. A provider may not deny MH rehabilitative services to an individual based on sexual orientation.

(2) A provider must ensure that an individual's refusal of any service offered by the provider does not preclude the individual from accessing a needed MH rehabilitative service.

§419.457. Crisis Intervention Services.

(a) Description. Crisis intervention services are interventions provided in response to a crisis in order to reduce symptoms of severe and persistent mental illness or serious emotional disturbance and to prevent admission of an individual to a more restrictive environment. Crisis intervention services include:

(1) an assessment of dangerousness of the individual to self or others;

(2) the coordination of emergency care services in accordance with §412.314 of this title (relating to Crisis Services);

(3) behavior skills training to assist the individual in reducing stress and managing symptoms;

(4) problem-solving;

(5) reality orientation to help the individual identify and manage their symptoms of mental illness; and

(6) providing instruction and structure to the individual in adapting to and coping with stressors.

(b) Conditions.

(1) Crisis intervention services may be provided to:

(A) an adult; or

(B) a child or adolescent.

(2) Crisis intervention services must be provided one-to-one.

(3) Crisis intervention services may be provided:

(A) on-site; or

(B) in-vivo.

(4) Crisis intervention services must be provided by a QMHP-CS.

(5) Crisis intervention services may not be provided to an individual who is currently admitted to a CSU.

(6) Crisis intervention services may be provided to an individual without first obtaining authorization from the department or its designee in accordance with §419.456 of this title (relating to Service Authorization and Treatment Plan).

(7) Crisis intervention services may be provided without a treatment plan described in §419.456(b) of this title.

§419.465. Medicaid Reimbursement.

(a) Billable and non-billable activities.

(1) A Medicaid provider may only bill for medically necessary MH rehabilitative services that are provided face-to-face to:

(A) a Medicaid-eligible individual; or

(B) the LAR or primary caregiver of a Medicaid-eligible child or adolescent.

(2) The cost of the following activities are included in the Medicaid MH rehabilitative services reimbursement rate(s) and may not be directly billed by the Medicaid provider:

(A) developing and revising the treatment plan and interventions that are appropriate to an individual's needs;

(B) staffing and team meetings to discuss the provision of MH rehabilitative services to a specific individual;

(C) monitoring and evaluating outcomes of interventions, including contacts with a person other than the individual;

(D) documenting the provision of MH rehabilitative services;

(E) a staff member traveling to and from a location to provide MH rehabilitative services;

(F) all services provided within a day program for acute needs that are delivered by a staff member, including services delivered in response to a crisis or an episode of acute psychiatric symptoms; and

(G) administering the uniform assessment to individuals who are receiving psychosocial rehabilitative services.

(b) Non-reimbursable activities.

(1) The department will not reimburse a Medicaid provider for any MH rehabilitative services provided to an individual who is:

(A) a resident of an intermediate care facility for persons with mental retardation as described in 42 CFR §440.150;

(B) a resident in an IMD;

(C) an inmate of a public institution as defined in 42 CFR §435.1009;

(D) a resident in a Medicaid-certified nursing facility unless the individual has been determined through a pre-admission screening and annual resident review assessment to be eligible for the specialized service of MH rehabilitative services;

(E) a patient in a general medical hospital; or

(F) not Medicaid-eligible.

(2) With the exception of crisis intervention services and psychosocial rehabilitative services that are being provided in a crisis situation, the department will not reimburse a Medicaid provider for any combination of MH rehabilitative services delivered in excess of 8 hours per individual per day. In addition, the department will not reimburse a Medicaid provider for more than:

(A) two hours per individual per day of medication training and support services;

(B) four hours per individual per day of psychosocial rehabilitative services when the psychosocial rehabilitative services are being provided in non-crisis situations;

(C) four hours per individual per day of skills training and development services;

(D) six hours per individual per day of day programs for acute needs; and

(E) crisis services should be provided until resolution of the crisis.

(3) The department will not reimburse a Medicaid provider for:

(A) a MH rehabilitative service that is not included in the individual's treatment plan (except for crisis intervention services documented in accordance with §419.456(b) of this title (relating to Service Authorization and Treatment Plan) and psychosocial rehabilitative services provided in a crisis situation;

(B) a MH rehabilitative service that is not authorized in accordance with §419.456 of this title (except for crisis intervention services documented in accordance with §419.456(b) of this title);

(C) a MH rehabilitative service provided in excess of the amount authorized in accordance with §419.456(a)(1) of this title;

(D) a MH rehabilitative service provided outside of the duration authorized in accordance with §419.456(b) of this title;

(E) a psychosocial rehabilitative service provided to an individual receiving MH case management services in accordance with Chapter 412, Subchapter I of this title (relating to Mental Health Case Management Services);

(F) a MH rehabilitative service that is not documented in accordance with §419.462 of this title (relating to Documentation Requirements);

(G) a MH rehabilitative service provided to an individual who does not meet the eligibility criteria as described in §419.455 of this title (relating to Eligibility);

(H) a MH rehabilitative service provided to an individual who does not have a current uniform assessment (except for crisis intervention services documented in accordance with §419.456(b) of this title);

(I) a MH rehabilitative service provided to an individual who is not present, awake, and participating during such service; and

(J) any other activity or service identified as non-reimbursable in the department's MH Rehabilitative Services Billing Guidelines, referenced in §419.468 of this title (relating to Guidelines).

(c) Services provided same time and same day.

(1) If a Medicaid provider provides more than one MH rehabilitative service to an individual at the same time and on the same day, the Medicaid provider may bill for only one of the services provided.

(2) A Medicaid provider may bill for a MH rehabilitative service provided to a child or adolescent's LAR or primary caregiver at the same time and on the same day the child or adolescent is receiving another MH rehabilitative service only if the staff member providing the service to the LAR or primary caregiver is different from the staff member providing the service to the child or adolescent.

(d) Services provided before a fair hearing. If the provision of a MH rehabilitative service is continued prior to a fair hearing decision being rendered, as required by Texas Administrative Code, Title 1, §357.7 (relating to Maintaining Benefits or Services), the Medicaid provider may bill for such service.

§419.469. References.

The following laws and rules are referenced in this subchapter:

(1) Texas Administrative Code, Title 1, Chapter 357 (relating to Medical Fair Hearings);

(2) Texas Administrative Code, Title 1, §357.7 (relating to Maintaining Benefits or Services);

(3) Texas Health and Safety Code, Chapters 573, 574, and 577; and §§534.001 and 534.053(a)(1)-(7);

(4) Texas Code of Criminal Procedure, Article 17.032 and Article 42.12, §11(d);

(5) Texas Government Code, §662.021;

(6) Texas Occupations Code, Chapters 155, 204, 301, 302, 501, 502, 503, 505, and 558;

(7) 42 CFR, §435.1009 and §440.150;

(8) Chapter 134 of this title (relating to Private Psychiatric Hospitals and Crisis Stabilization Units);

(9) Chapter 404, Subchapter E of this title (relating to Rights of Persons Receiving Mental Health Services);

(10) Chapter 411, Subchapter N of this title (relating to Standards for Services to Individuals with Co-Occurring Psychiatric and Substance Use Disorders (COPSD));

(11) Chapter 412, Subchapter G of this title (relating to Mental Health Community Services Standards);

(12) Section 412.314 of this title (relating to Crisis Services);

(13) Section 412.315 of this title (relating to Assessment and Treatment Planning);

(14) Chapter 412, Subchapter I of this title (relating to Mental Health Case Management Services);

(15) Chapter 414, Subchapter L of this title (relating to Abuse, Neglect, and Exploitation in Local Authorities and Community Centers); and

(16) Section 414.504(g) of this title (relating to Pre-employment and Pre-assignment Clearance).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 28, 2006.

TRD-200603978
Cathy Campbell
General Counsel
Department of State Health Services
Effective date: September 1, 2006
Proposal publication date: April 14, 2006
For further information, please call: (512) 458-7111 x6972

♦ ♦ ♦

SUBCHAPTER L. MEDICAID MENTAL HEALTH REHABILITATIVE SERVICES

25 TAC §419.460

STATUTORY AUTHORITY

The adopted repeal is authorized by Health and Safety Code, §534.052, which requires the adoption of rules necessary and appropriate to ensure the adequate provision of community based mental health services through a local mental health authority; Health and Safety Code, §534.053, which requires the department to ensure that psychosocial rehabilitation programs are available in each local mental health authority service area; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 28, 2006.

TRD-200603979
Cathy Campbell
General Counsel
Department of State Health Services
Effective date: September 1, 2006
Proposal publication date: April 14, 2006
For further information, please call: (512) 458-7111 x6972

♦ ♦ ♦

PART 6. STATEWIDE HEALTH COORDINATING COUNCIL

CHAPTER 571. HEALTH PLANNING AND RESOURCE DEVELOPMENT

SUBCHAPTER B. HEALTH INFORMATION TECHNOLOGY ADVISORY COMMITTEE

25 TAC §§571.11 - 571.13

The Statewide Health Coordinating Council (council) adopts new §§571.11 - 571.13, relating to the composition, procedures and staffing of the Health Information Technology Advisory Committee (committee). The new sections are adopted without changes to the proposed text as published in the February 10, 2006, issue of the *Texas Register* (31 TexReg 791) and, therefore, will not be republished.

Senate Bill 45, 79th Texas Legislature enacted Health and Safety Code, §104.0156, establishing the committee to report to the council.

Government Code, Chapter 2110, State Agency Advisory Committees, requires a state agency that is advised by an advisory committee to adopt rules relating to the purpose and tasks of the committee and the method by which the committee will report to the agency. Health and Safety Code, §104.0156, states that Chapter 2110 applies to the committee except for the provisions on the committee's size, composition and duration. The adopted sections implement Chapter 2110, with the exceptions of §2110.002, Composition of Advisory Committees and §2110.008, Duration of Advisory Committees.

The adopted sections establish committee objectives (tasks and purposes), constitution, and procedures for reporting to the council. The council elects to put the committee size into rule form. The committee size is required to determine whether a quorum of committee members is present to deliberate topics in accordance with Government Code, Chapter 551 (Open Meetings Act).

No comments were received during the public comment period regarding the proposed rules.

The adopted new sections are authorized by the Health and Safety Code, §104.012, which authorizes the council to adopt rules governing the development and implementation of the state health plan, which includes issues relating to information technology; and Government Code, Chapter 2110, which requires a state agency to adopt rules relating to the agency's advisory committees.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 31, 2006.

TRD-200603983

Ben G. Raimer, M.D.

Chairman

Statewide Health Coordinating Council

Effective date: August 20, 2006

Proposal publication date: February 10, 2006

For further information, please call: (512) 458-7111 x6972

♦ ♦ ♦

TITLE 28. INSURANCE

PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 126. GENERAL PROVISIONS APPLICABLE TO ALL BENEFITS

28 TAC §§126.5 - 126.7

The Commissioner of the Division of Workers' Compensation, Texas Department of Insurance, adopts amendments to §126.5 and §126.6 and new §126.7, concerning required medical evaluations, entitlement and procedures for requesting a designated doctor. The new and amended sections are adopted with changes to the proposed text as published in the February 3, 2006, issue of the *Texas Register* (31 TexReg 664).

The new and amended sections are necessary to implement changes to the Labor Code §§408.004, 408.0041, and 408.151 as a result of House Bill (HB) 7, enacted by the 79th Legislature, Regular Session. HB 7 amended Labor Code §408.004 to limit the use of a required medical examination (RME) prior to a designated doctor examination to only the resolution of issues regarding the appropriateness of the health care received by an injured employee (employee). HB 7 also amended Labor Code §408.0041 by expanding the scope of issues a designated doctor may be requested to address. The amendments to §126.5 and §126.6 and new §126.7 are necessary to implement amendments to Labor Code §§408.004, 408.0041 and 408.151 which establish the requirements and processes for requesting and scheduling an RME and designated doctor examination. These adopted rules reflect the Division's efforts to implement the statutory requirements of HB 7 with stakeholder input and public comment. The Division has made changes to the sections based on public comment and for clarification purposes. The Division added notification to the employee's representative, if any, where appropriate in §126.6 and §126.7 as suggested by commenters. The other changes are more fully discussed below in this preamble.

Section 126.5 provides procedural direction and guidance regarding the reasons and timeframes an RME may be requested and granted. Consistent with Labor Code §§408.004, 408.0041 and 408.151, §126.5 specifies the reasons and times during the lifetime of the claim an insurance carrier or the Commissioner of Workers' Compensation may require an RME. The Division has made changes to §126.5 as a result of public comment to clarify that it's the requesting party's responsibility to ensure that an RME doctor does not have a disqualifying association and to change the number of days from 10 to 15 for an employee to agree to an examination. Other changes have been made for clarification purposes.

Section 126.6 provides procedural direction and guidance regarding scheduling RMEs, rescheduling RME appointments when there is a scheduling conflict, filing of reports by the RME doctor, suspending of temporary income benefits (TIBs) when the employee fails to attend, without good cause, a required medical examination following a designated doctor examination, and the reinstating of TIBs when the employee submits to a rescheduled examination.

Subsection (a) provides that the Division will grant or deny the requests for an RME within seven days of receipt of the request. The Division will provide a copy of the notice for the RME to the injured employee, employee's representative, if any, and the

insurance carrier. Subsection (a) also requires the notice to provide information that failure to attend the examination may result in the loss of benefits and an administrative penalty. Subsection (b) requires a rescheduled examination resulting from a schedule conflict be rescheduled within seven days of the originally scheduled exam unless the employee and RME doctor agree to an extension. Based on public comment, the Division has added language to limit the amount of time for an extension to 30 days from the originally scheduled exam. Subsection (e) requires a report to be filed regarding the findings of the RME by the RME doctor who performed an examination regarding the appropriateness of medical care received by the injured employee pursuant to §408.004. It also provides with whom the report shall be filed and the manner in which the report is to be filed. Based on comments received, the Division has added a description of when a notice is considered verifiable. The Division has also made changes to subsections (f), (h), and (j) as a result of public comments. The changes include notice to the employee and employee's representative, if any, of the MMI or impairment rating; require an RME to file a narrative report within seven days of the exam if it addresses issues other than those in subsections (f) and (g); require an RME doctor to reschedule an exam as soon as possible but no later than 30 days after contact from the employee if TIBs have been suspended; reinstate TIBs as of the date the employee submits to the exam; and reinitiate TIBs when the carrier is notified that the employee had good cause for not attending the exam.

New §126.7 provides procedural direction and guidance regarding the request for, and selection of, a designated doctor consistent with the amendments to Labor Code §408.0041. The section also provides procedural direction and guidance regarding the scheduling of the designated doctor examination, the suspension of TIBs for failure to attend the examination without good cause, the reinstatement of TIBs when the injured employee submits to the examination, and the responsibilities of the designated doctor. As a result of public comment, the Division made changes to subsection (e)(5) to clarify that the Division will appoint a new designated doctor if an exam cannot be rescheduled with the existing designated doctor within 21 days. In subsection (g) in response to comments, the Division has changed the requirement for reinstatement of TIBs to submission to the exam rather than rescheduling the exam. The Division also added that TIBs is reinstated when the carrier is notified that the employee had good cause for not attending the exam. The Division has changed subsection (i) to clarify that when using the same designated doctor only those records not previously submitted have to be provided for a subsequent exam and deleted the requirement that original records be left intact. The Division made changes to subsection (j) to clarify that a medical history should be obtained from the employee. In subsection (k), the testing completion requirement of seven days has been changed to 10 days as well as changing the trigger for filing the report from utilizing another health care provider to the need for additional testing. Subsections (n), (o) and (p) specify the required reports for the designated doctor to file pertaining to the type of examination conducted. The Division has changed subsection (u) based on public comments to clarify that the designated doctor must be currently on the list at the time a request is received and that the designated doctor shall respond within five days to a letter of clarification. The Division has also changed the requirements when a reexamination is necessary.

General: A commenter states the rules need to be rewritten to eliminate the worthless and meaningless definitions of the various types of physicians and the restrictions on the examinations. A commenter believes that the independent review process becomes meaningless by changing the definitions and authority of the different physicians in the system. A commenter contends that networks will make sure these rules don't apply to them so that they may have as many RMEs and designated doctors as they want.

Agency Response: The Division disagrees that the rules need to be rewritten. The Division believes the rules provide clarification to doctors who perform RMEs and information regarding when they may appropriately perform an examination on an injured employee based on new statutory requirements and restrictions enacted under HB 7. Labor Code §408.004(f) is clear regarding the applicability of RMEs for injured employees receiving care through a network. An injured employee who receives care through a network may not be required to attend an RME regarding appropriateness of medical care. However, in accordance with §408.0041, an injured employee receiving care through a network may be required to attend an RME that addresses MMI/IR, return-to-work, extent of injury or causation after a designated doctor examination on the same issue.

§126.5: A commenter states that there should only be "treating doctor" and "independent medical examination physicians." He contends the designated doctor process has been destroyed over the years.

Agency Response: The Division disagrees that there should only be two types of doctors in the system, and no designated doctors. Labor Code §404.0041 requires designated doctors to be in the system.

Comment: A commenter questions who determines what is "unbiased," and states that Hearing Officers and Appeal Panel Decisions cannot be used.

Agency Response: The Division determines what is an unbiased report. The Contested Case Hearing Officers and Appeals Panel judges make determinations as to the appropriateness, accuracy and applicability of the differing medical opinions during the dispute resolution process.

Comment: A commenter states the rule allows for too many "opinions," and that special training and medical literature should be used to clarify controversies.

Agency Response: The Division disagrees. The statute provides for opinions by treating doctors, required medical exam doctors, and designated doctors. Additionally, medical literature may be a resource to doctors in the system, but it does not take the place of a physical examination of the employee regarding the specific issues in question or dispute.

Comment: A commenter states that it is horrible that an RME doctor could become a treating doctor or take over the injured employee's care and that this should only happen when there is a predetermined special medical need.

Agency Response: The Division disagrees. The employee may choose the RME doctor as the employee's treating doctor. However, the workers' compensation healthcare networks may prohibit this type of practice since injured employees receiving treatment through a network can only be treated by a doctor authorized/approved by the network.

Comment: A commenter states that networks and employees should be allowed to request RMEs.

Agency Response: The Division disagrees. Labor Code §408.004 does not allow a network or an injured employee to request an RME. Only the Commissioner of Workers' Compensation or the insurance carrier may request or require an RME.

Comment: A commenter states there should not be a limit on the number of physicians per claim that can perform an RME, and that any number of RME physicians per claim could be agreed on and used.

Agency response: The Division disagrees. Labor Code §408.004(b) requires the use of the same doctor for subsequent exams unless otherwise approved by the Commissioner.

Comment: A commenter states RME doctors should be required to have the same level of Division approved training as designated doctors, and that their decisions should be tracked.

Agency Response: The Division agrees in part and disagrees in part. The Division agrees that an RME doctor that performs MMI/IR certifications must be trained and certified by the Division in the same manner as a designated doctor. They are currently required to meet the same training requirements for this type of exam as the designated doctor, and this requirement will continue. The Division disagrees that an RME doctor is required to have the same level of training across the board as a designated doctor. Not every RME doctor will be requested to perform the types of exams that designated doctors will perform. Labor Code §408.1225 requires the designated doctor to meet specified requirements. There are no equivalent requirements regarding RME doctors.

Comment: A commenter states it is too much to see another doctor, and that she loses time getting well waiting on what her primary doctor wants to do.

Agency Response: The Labor Code specifically permits an insurance carrier to require an exam with a doctor of its choice. If the commenter is unhappy with the treatment received from the treating doctor, the commenter should discuss treatment concerns with the treating doctor and consider requesting a change of treating doctor.

Comment: A commenter requests the Division to specifically state the effective date of the rule as the effective date for a carrier is on or after the date provided by the rule.

Agency Response: The effective date of the rules is January 1, 2007. The Division has specified the date that a request for an RME may be made in §§126.5 - 126.7 and §130.6 as on or after January 1, 2007.

§126.5 and §126.7: A commenter states that the rules lay out a cumbersome process that many doctors may not want to participate in. The commenter also believes the rules are positive because they place responsibilities on the injured employee.

Agency Response: The Division disagrees in part and agrees in part. The Division disagrees that the rules lay out a cumbersome process and feels that the rules as written lay out reasonable procedural guidance regarding the request for and performance of an RME and designated doctor exam. The Division agrees that the rules place requirements on the injured employee.

§126.5(a): A commenter states there is no Labor Code provision that prohibits a doctor from performing as an RME doctor because he belongs to the same network as the employee's treating doctor.

Agency Response: Although there is no provision in the Labor Code for this prohibition, the Insurance Code §1305.101(b) prohibits a doctor from performing as a designated doctor or required medical exam doctor on an employee that is receiving care through a network with which the doctor is employed or contracted.

Comment: A commenter suggests clarifying up front that prior to a designated doctor exam an RME may only be used to evaluate the appropriateness of health care.

Agency Response: The Division has structured the rule in subsection (c)(1), (2) and (3) to provide clarification as to when an RME may be requested and scheduled.

§126.5(b): A commenter states the carrier is entitled to an RME under specified circumstances. The commenter also states that "similar issues" should not be deleted, and that the proposed language does not track the statute. Another commenter asserts that Labor Code §408.004(a) and (b) are parallel provisions. The commenter states that the Division's ability to require an RME under subsection (a) is "on its own motion," and limited to only the issue of appropriateness of medical care; however, under subsection (b), the insurance carrier may request an RME for any reason set forth in §408.004, including an exam on the issue of "whether treatment should be extended to another body part or system" and "a change in the employee's condition and whether it is necessary to change the employee's diagnosis."

Agency Response: The Division disagrees that the insurance carrier is entitled to an RME under specified circumstances. The Division's interpretation is that the Division's ability to order an RME, on its own motion or at the request of the carrier, is restricted to only the issue of appropriateness of medical care. There is no statutory provision in subsection (a) that an RME may be ordered only at the Division's own motion. The Division also interprets subsection (b) to restrict the Division's ability to require an employee to attend an RME until after the insurance carrier has first attempted to seek the employee's agreement to attend. The statutory provision the commenter references regarding exams on issues other than appropriateness of medical care is permissive based on the Commissioner of Workers' Compensation adopting rules to allow the additional exams. The Division has determined that the use of additional RME exams as previously allowed by §408.004 is not a tool that has been widely used. Division records indicate that in FY2004, only 151 requests for additional exams were received with 91 being approved. In FY2005, 150 requests were received with 81 being approved. Additionally, the "similar issues" provision of Labor Code §408.0041 would seem logical for the types of exams to which the commenter referred. Labor Code §408.004(b) provides that the Commissioner of Workers' Compensation may adopt rules that allow up to three medical examinations in a 180-day period for specific circumstances. The Division is not adopting rules to allow the additional exams. The Division has determined that this provision is not necessary, as the designated doctor process will handle the need for the additional exams.

The Division disagrees that "similar issues" should not be deleted. The provision for an RME on "similar issues" was removed from Labor Code §408.004 by HB 7 and replaced in §408.0041 regarding designated doctor exams.

§126.5(c)(1) and §126.7(t): Several commenters question why the additional reasons for requesting an RME more frequently than 180 days are being deleted. The commenters contend that

an RME should be allowed as often as necessary, not once every 180 days or once a year. Several commenters recommend amending the section to allow for one RME for return to work every 180 days, rather than once per year, after the second anniversary of SIBs.

Agency Response: The reason for the deletion of the additional RMEs is due to previous non-use of the rule to request additional RMEs. The reasons for the additional RMEs provided in Labor Code §408.004 can be handled appropriately under the "similar issues" provision of Labor Code §408.0041. Additionally, by handling the reasons for additional RMEs as a "similar issue" under §408.0041, the carrier could request the designated doctor exam on these issues every 60 days rather than every 180 days as allowed by §408.004. Labor Code §408.004(b) restricts the carrier's ability to obtain an RME to once every 180 days. The Division disagrees that the insurance carrier should be able to request an RME for return to work every 180 days. Labor Code §408.151(a) limits the insurance carrier's ability to require the injured employee to attend an RME more than once per year after the second anniversary of entitlement to SIBs.

§126.5(c)(3): Several commenters recommend amending subsection (c)(3) to allow for one RME for return to work every 180 days, rather than once per year, after the second anniversary of SIBs. The commenter also states the insurance carrier should be able to request an RME if the injured employee's condition worsens after MMI has been certified and the injured employee applies for lifetime income benefits (LIBs).

Agency Response: The Division disagrees that the insurance carrier should be able to request an RME for return to work every 180 days. Labor Code §408.151(a) limits the insurance carrier's ability to require the injured employee to attend an RME more than once per year after the second anniversary of entitlement to SIBs.

The Division agrees in part and disagrees in part regarding the comment that the insurance carrier should be able to request an RME if the injured employee's condition worsens after MMI has been certified and the injured employee applies for LIBs. In the situation provided it appears this would be an extent of injury issue. The Division disagrees that the carrier can proceed directly to an RME. The Division agrees the insurance carrier should be able to have a doctor review the extent of the injured employee's injury in an effort to determine if the injured employee's injury meets the requirement for LIBs. An examination by the designated doctor under Labor Code §408.0041 is available for this purpose. After the designated doctor's examination, the insurance carrier will be entitled to an RME on the issue. Additionally, since entitlement to LIBs is based on the severity of the injury, not on the injured employee's ability to work, a request for an exam regarding return to work is not appropriate.

§126.5(d): Several commenters recommend removing the requirement that an RME doctor to be on the Division's approved doctor list (ADL). Some commenters also state that many good doctors became unavailable after the ADL went into effect in 2003 and removing the restriction would make more doctors available, particularly specialists, such as urologists and psychiatrists.

Agency Response: The Division disagrees. Labor Code §408.023 requires RME doctors to be on the ADL and thus, these doctors should have the same training as other doctors practicing within the system. Additionally, an RME doctor has to be on the ADL to be able to certify MMI/IR. However, pursuant to Labor Code §408.023(k) the requirements of the ADL expire on September 1, 2007 and this requirement will no longer be in effect.

Comment: A commenter recommends adding language to clarify that the MMI/IR exam is after a designated doctor exam.

Agency Response: The Division agrees and has changed the language.

§126.5(e): A commenter recommends amending the reference to "subsection (b)(2) and (3)" to "subsection (c)(2) and (3)" since there is no (b)(2) and (3).

Agency Response: The Division agrees and has corrected the cite. Additionally, the Division changed the reference to "subsection (g)" to the appropriate cite.

§126.5(e)(2): Several commenters recommend deleting "on the fifth day after," as the time allowed under the current rule is sufficient.

Agency Response: The intent of the proposal was to provide the injured employee 10 days to reach agreement with the insurance carrier. The outcome of this intent is that the injured employee has 15 days after the request is sent, considering §102.5, to reach agreement with the insurance carrier. The Division has clarified that the injured employee has 15 days to agree to the insurance carrier's request.

Comment: A commenter states that the injured employee rarely agrees to attend the RME. The commenter further states there is no legitimate reason to extend the timeframe for the injured employee to agree to the exam from 10 days to 15 days since the Division almost always approves the carrier's request. A commenter states that some parties will wait until the 10th day only to not agree to the exam, prolonging the time required to get approval for the RME.

Agency Response: The Division disagrees. The employee should be allowed a sufficient amount of time to make a decision. Additionally, the rule provides that the adjuster may contact the employee, or the employee's representative, by telephone to obtain the employee's response.

§126.5(f)(2): A commenter agrees with the deletion of this subsection from the existing rule. He states the provision created confusion regarding whether a carrier is allowed a different doctor when the request is pursuant to Labor Code §408.004 or §408.0041.

Agency Response: The Division acknowledges the comment and agrees that the carrier may request a different doctor to perform the exam pursuant to Labor Code §408.004 or §408.0041. The Division does not agree that the carrier may request different doctors for post-designated doctor exams based on the multiple issues addressed by the designated doctor. The RME doctor selected by the carrier for the post-designated doctor exam should be qualified to address all the issues addressed by the designated doctor.

§126.6: A commenter states it is a waste of time going to the insurance carrier's doctor. She believes that is why employees don't get well and states that the insurance carriers think the injured employees are faking.

Agency Response: The Division disagrees. Labor Code §§408.004, 408.0041 and 408.151 entitle an insurance carrier to an exam performed by a doctor of its choice. Section 408.004 requires an employee to submit to medical examina-

tions to resolve any question about the appropriateness for health care received by the employee. Section 408.0041(a) authorizes the Commissioner to order a medical examination to resolve any questions about (1) the impairment caused by the compensable injury; (2) the attainment of maximum medical improvement; (3) the extent of the employee's compensable injury; (4) whether the injured employee's disability is the direct result of the work-related injury; (5) the ability of the employee to return to work; or (6) other issues similar to those described in subdivisions (1) - (5). Section 408.151(b) states that if a dispute exists as to whether the employee's medical condition has improved sufficiency to allow the employee to return to work, the Commissioner shall direct the employee to be examined by a designated doctor chosen by the Division.

Comment: A commenter contends that RMEs are occurring prior to the designated doctor exam rather than after as required by statute. The commenter recommends that a statistical analysis of RME doctors' exams be compared with an analysis of designated doctor exams.

Agency Response: The Division has structured the rule to be consistent with the statute, which does not authorize or allow this. If the commenter is aware of violations of the statute and rule occurring, then he should report these violations to the Division so that appropriate action can be taken.

Comment: A commenter states that since this rule pertains to carrier-selected and Division-appointed RMEs, it should be noted that the authority to order exams under Labor Code §408.004 does not apply to health care provided pursuant to a workers' compensation health care network (WCHCN).

Agency Response: The Division disagrees. Section 126.6 addresses RMEs for issues other than appropriateness of medical care. It also addresses RMEs allowed by Labor Code §408.0041, which may be requested by the employee in addition to the insurance carrier. Section 126.5(c)(1) provides the requested clarification that RMEs to address appropriateness of medical care may not be performed on employees receiving medical care through a workers' compensation health care network.

Comment: A commenter states that since the Division has not repealed §134.650, regarding Prospective Review of Medical Exams (PRME), it should be stated in the rule that the Division may not require an RME for employees covered by a WCHCN.

Agency Response: The Division disagrees. The Division intends to adopt treatment guidelines in the near future. The adoption of the treatment guidelines, along with the expanded role of the designated doctor, is anticipated to eliminate the need for the PRME rule. The Division intends to repeal §134.650 when the treatment guidelines have been implemented. An exception to the PRME rule in this rule would be inappropriate at this time. Additionally, the restriction on the use of a PRME for an injured employee receiving care through a network can be addressed through procedural guidance and training of Division staff.

Comment: A commenter states that the rules lay out a cumbersome process that many doctors may not want to participate in. The commenter also believes the rules are positive because they place responsibilities on the injured employee.

Agency Response: The Division disagrees in part and agrees in part. The Division disagrees that the rules lay out a cumbersome process and feels that the rules as written lay out reasonable procedural guidance regarding the request for and performance of an RME and designated doctor exam. The Division agrees that the rules place requirements on the injured employee.

§126.6(a): A commenter questions whether "notice" carries the same compliance weight as "order," and whether there is a difference between the two words.

Agency Response: The Division assures the commenter that notice does carry the same compliance requirement as order. If an injured employee does not comply with the requirements of the notice, the carrier can still take the same action that it previously could take for non-compliance. The Division has merely clarified what its practice has been by changing the word. The Division was providing notice to the employee but was referring to that notice as an order. No change has occurred in any of the requirements of the parties or the need to comply with any of the provisions of the rules. The change was made to be consistent with the actual practices of the Division and with those of the Department.

§126.6(a), (b) and (k): Several commenters state that the Division notice requiring the injured employee to attend an RME should also include notice that a party may not ignore the order because of some perceived fault by the Division in approving the request. A commenter states that some attorneys are advising their injured employee clients not to attend the RME because the attorney believes the Division should not have approved the request.

Agency Response: The Division disagrees. The Division does not believe that clarification needs to be provided to advise participants in the workers' compensation system that failure of one party to comply with statute or rules does not negate the other party's obligation to comply with statutory or rule requirements. Failure of a system participant to comply with a requirement of the Division or the Commissioner of Workers' Compensation may result in the issuance of an administrative penalty.

§126.6(b): A commenter states the requirement for the exam to be conducted within 30 days from receipt of the notice, with 10 days notice to the employee, is unreasonable. Even when scheduling the exam in advance, delays by the Division make it impossible to meet the required timeframes. The commenter also states some attorneys are advising their injured employee clients to not attend the exam if the employee does not receive 10 days notice of the scheduled examination. A commenter states there is no statutory authority for limiting the amount of time the order is valid.

Agency Response: The Division disagrees. According to agency records, a request for an RME is processed, on average, in less than three days from receipt by the Division. Taking into consideration distribution to the insurance carrier through the Austin Rep Box, the request for an RME is processed and a response provided to the carrier within seven days of receipt by the Division. Failure of one party to comply with statutory or rule provisions does not negate the other party's obligation to comply with statutes or rules. Failure of a system participant to comply with a requirement of the Division or the Commissioner of Workers' Compensation may result in the issuance of an administrative penalty. The Division is not limiting the amount of time the notice is valid. The notice of required attendance does not become invalid due to noncompliance by one of the parties. If the carrier does not meet the requirement to schedule the exam timely, the carrier may be assessed an administrative penalty. The injured employee is still required to attend the exam. If the employee does not attend the exam, the employee

is subject to an administrative penalty and/or suspension of temporary income benefits.

Comment: A commenter states there needs to be a limit on how far out and how many times an appointment may be rescheduled.

Agency Response: The Division agrees in part and disagrees in part. The Division disagrees that there needs to be a specific number of times an appointment can be rescheduled based on scheduling conflicts between the doctor and the employee as long as communication between the doctor and employee is taking place. The Division agrees that a limit should be set on how far out the exam may be rescheduled. Based on the requirement that the exam be initially scheduled within 30 days, the Division requires the exam to be rescheduled within 30 days of the originally scheduled exam.

§126.6(e) and (g): Several commenters state the rule does not define "verifiable means" and believe the phrase will be read in context and construed according to rules of grammar and common usage. A commenter provided definition language for consideration.

Agency Response: The Division agrees and has added a description of "verifiable means" to subsection (e) and it is to be used as direction to ensure that delivery is verifiable. The goal of this requirement is not to regulate how a system participant makes delivery of a report or other information to another system participant, but to ensure that the system participant filing the report or providing the information has verifiable proof that it was delivered.

Comment: A commenter states the doctor should be required to describe how he believes the injury occurred and that the credibility and persuasiveness of the doctor is dependent upon what he understands the history of the injury to be.

Agency Response: The Division disagrees, as making this a requirement would be very subjective and would call for speculation on the part of the doctor. The medical information provided to the doctor should contain an objective history and description of the injury.

§126.6(f) and §126.7(u) and (v): Several commenters state that "the employee's representative, if any" needs to be added to the report distribution list, notice of designated doctor appointment distribution list and rescheduled appointment distribution list.

Agency response: The Division agrees. The language has been added to the rule. It should be noted that §102.4(b) provides for notification to the injured employee's representative if the health care provider has been notified of the representation. If the provider has not been notified of the representation, the provider has no obligation to provide notice to the representative.

Comment: Several commenters state the rule as written appears to allow an RME doctor to certify MMI/IR merely after a designated doctor exam, even if the designated doctor determines the injured employee is not at MMI. They state the true purpose is to allow an RME doctor to certify MMI/IR only after the designated doctor has certified MMI/IR.

Agency Response: The Division disagrees that an RME doctor should only be allowed to certify MMI/IR after the designated doctor has certified MMI/IR. Labor Code §408.0041(f) allows the insurance carrier to request an RME if it is not satisfied with the opinion of the designated doctor, not just when the designated doctor certified MMI/IR. Additionally, refusing to allow the insurance carrier to seek the opinion of an RME would prevent the carrier from being able to gather medical evidence to dispute the determination of the designated doctor.

§126.6(h)(1)(B): A commenter is concerned about the elimination of subparagraph (B) and believes that injured employees will not attend rescheduled exams because the deterrent has been removed.

Agency Response: The injured employee is still required to attend a rescheduled exam and TIBS can still be suspended if an injured employee does not attend the exam without having good cause. This situation is addressed in §126.6(j)(3).

§126.6(j): A commenter recommends missing an RME required under Labor Code §408.004(a) should result in suspension of TIBs to the injured employee.

Agency Response: The Division disagrees. Labor Code §408.004(a) addresses RME exams for appropriateness of medical care. Labor Code §408.004(e) provides that an employee's failure to attend an RME required under §408.004(a) constitutes an administrative violation not suspension of TIBs.

§126.6(j)(1)(B): Several commenters recommend deleting the proposed language and replacing it with the previous language. They state that the entitlement to TIBs should occur when the employee submits to the exam, not when he contacts the doctor's office. A commenter states it is unclear how the carrier will be notified of the date the injured employee contacted the doctor's office to reschedule the examination and suggested language.

Agency Response: The Division disagrees that the original language should be replaced as suggested. However, the requirement for reinstatement of TIBs effective the date the injured employee contacts the doctor's office has been removed and clarifying language added regarding the rescheduling of the missed appointment and the reinstatement of TIBs once the injured employee has submitted to the exam.

§126.6(j)(2): A commenter states there is no statutory provision for the suspension of TIBs for a missed appointment. The statute provides for an administrative penalty.

Agency Response: The Division disagrees that there is no statutory provision for the suspension of TIBs. This section addresses an RME after a designated doctor exam. Labor Code §408.0041(j) allows for the suspension of TIBs for failure to attend a designated doctor exam or an RME after the designated doctor exam. The administrative penalty is in addition to the suspension of TIBs.

§126.7: A commenter questions if everything in §130.6 has been moved to this rule, and suggests it should all be in one place. A commenter recommends that §130.6(d), (e), and (f) be moved to §126.7 to avoid confusion.

Agency Response: The Division clarifies that not all the requirements of §130.6 have been moved to this rule. The Division disagrees that all designated doctor language should be in one place. Chapter 126 addresses general provisions applicable to all benefits. Section 126.7 provides general direction regarding the request for a designated doctor during any benefit period. Chapter 130, Subchapter A, specifically addresses issues regarding the certification of MMI/IR and impairment income benefits. Section 130.6 provides direction specific to an exam performed for the purpose of certifying MMI by a designated doctor

Comment: A commenter objects to online exams for designated doctors and wants the practice eliminated. The commenter believes that doctors pay other individuals to take the exam for them when it is online.

Agency Response: The Division understands the commenter's concern about people taking exams for other people. There are protocols in place to ensure that the appropriate person is taking the exam.

Comment: A commenter objects to required medical exams performed by carrier paid physicians as biased and believes that designated doctors should only perform RMEs.

Agency Response: The statute permits a carrier to select an RME doctor. An injured employee's provider may attend an RME with the employee. It is necessary for a carrier to be able to request an RME to ensure that appropriate care is being provided to the injured employee. This ability ensures that there are checks and balances in the system.

Comment: A commenter states that there should be a provision for reimbursement from the Subsequent Injury Fund (SIF) when the insurance carrier makes an overpayment of income benefits based on a designated doctor's report.

Agency Response: The Division understands the commenter's concern about reimbursement of an overpayment. Labor Code §403.006 provides for the reimbursement from the SIF when there has been an overpayment of benefits made under an interlocutory order or decision of the Commissioner. The Division will review the applicable provisions of the Labor Code and rules and make a determination if this is a matter that can possibly be addressed at a future date.

§126.7(c)(4) and (5): A commenter feels the designated doctor should be evaluating the employee's ability to return to any type of work at any employer, not just the employer at the time of the injury, and suggests changing the language in paragraphs (4) and (5) to reflect this concept. The commenter also recommends deleting "similar issues" and further defining other reasons for examinations by the designated doctor such as "the effects of any intervening injury or illness on the ability to work or on the impairment rating."

Agency Response: The Division agrees in part and disagrees in part. The Division disagrees regarding "similar issues" because this is from Labor Code §408.0041(a). The reasons for requesting a designated doctor exam provided in the rule are statutory provisions. Only reasons for the exam provided by statute will be included here.

The Division agrees that the designated doctor should be evaluating the injured employee's ability to return to any type of work. Neither the statute nor this rule is intended to limit the exam to the ability to return to work at the same employer, or the same type of work being performed, at the time of the injury.

§126.7(d): A commenter requests the Division to define the legal term "presumptive weight."

Agency Response: The Division declines to define the term "presumptive weight" because it is a well recognized, commonly understood legal term. Additionally, the term should be read in conjunction with the remainder of the sentence in which it is contained, as well as other uses of the term in Labor Code §§408.0041, 408.1225, 408.125, and 408.151. The Division will determine whether the report of the designated doctor is to be given "presumptive weight" by comparing it to other evidence. If other evidence exists that counters the report, the Division may decide not to resolve questions about the employee's injury based upon the report of the designated doctor.

§126.7(e) and (i)(3): A commenter states that a 14 - 21 day timeframe to schedule an appointment is unwieldy. He recommends "no earlier than 21 days and no later than 28 days" from the date the exam is set.

Agency Response: The Division disagrees. Labor Code §408.0041(b) requires the Division to assign a designated doctor not later than the 10th day after the date under which the request under §408.0041(a) is approved and the exam to be scheduled no later than the 21st day after the Commissioner issues the order. The Division expects the medical records to be delivered prior to the exam to ensure they are there in time for the examination.

Comment: A commenter states the subsection requires the assigning of the designated doctor but does not articulate standards as to the doctor's qualifications. The commenter states the statute requires the credentials to be established by rule and they are not present.

Agency Response: The Division has addressed the qualifications to be selected as a designated doctor in §180.21, and it is not necessary for the qualifications to be restated.

Comment: A commenter requests that the rule be amended to prohibit Division staff from rejecting a request for a designated doctor because the request is incomplete or contains incorrect information that the commenter feels is available through the Division's records. The commenter provides recommended language.

Agency Response: The Division disagrees. The reason the Division requires the information on the request for a designated doctor is because the insurance carrier or the injured employee has not always provided the required information to the Division. There have been many occasions where the request for the designated doctor exam was the first notice the Division had of the injury and claims had to be created from the information contained on the request. Additionally, the carrier and the employee are parties that should have immediate access to and knowledge of the information required.

§126.7(f): A commenter recommends requiring the rescheduled exam to occur in seven days, rather than the proposed 14 days.

Agency Response: The Division disagrees. However, the Division has changed the language to be consistent with the requirement under Labor Code §408.0041 to schedule the initial examination within 21 days. A new designated doctor may need to be selected by requiring the exam to be rescheduled within seven days. This change will allow some leeway in facilitating use of the same designated doctor.

§126.7(g)(2): Several commenters recommend that the precondition to reinstated TIBs be submitting to the exam, not contacting the doctor's office to reschedule. Another commenter states that reinstating TIBs when the employee calls to reschedule the exam will encourage missed appointments. The commenter also states that the statute allows for suspension of TIBs until the employee submits to the exam. As such, the rule conflicts with the statute.

Agency Response: The Division agrees. The requirement for reinstatement of TIBs effective the date the injured employee contacts the doctor's office to reschedule has been removed. Lan-

guage has been added regarding the rescheduling of the missed appointment and the reinstatement of TIBs based on the injured employee's submitting to the exam.

§126.7(h): A commenter recommends adding a requirement for staff to document why an alternate designated doctor was selected in DRIS logs or similar diary system.

Agency Response: The Division disagrees that it is necessary to change the rule. Generally, Division staff already record this information. This requirement will be addressed by internal Division procedure.

Comment: A commenter recommends deleting the language "if the doctor is still qualified and available" from the rule. He recommends that the same doctor be required to be used, and that common sense can dictate if a new doctor is needed.

Agency response: The Division disagrees. The language provides that the same designated doctor shall be used unless there is a reason to select a different doctor. The language allows the Division to take appropriate action based on the qualifications or availability of the designated doctor.

Comment: A commenter questions what the timeframe is for a rescheduled examination. The commenter states a new designated doctor should not be appointed just because the designated doctor is not readily available, and believes there should be reasonable leeway for repeat examinations.

Agency Response: The Division notes that an exam rescheduled due to a scheduling conflict is addressed in §126.7(f), which requires the examination to be rescheduled within 21 days of the originally scheduled examination. For a subsequent examination pursuant to subsection (h), the required timeframe is between the 14th and 21st days after the Division's receipt, as required by §126.7(e). This change will allow some leeway in facilitating use of the same designated doctor.

§126.7(h)(1): A commenter states that the 12-month treatment restriction is insufficient and should be extended to five years. Agency Response: The Division disagrees. The 12-month restriction was established to prevent a doctor from examining an employee with whom the doctor has had a recent relationship. Additionally, imposing a longer restriction may have an adverse impact on the pool of eligible doctors.

§126.7(h)(3): A commenter suggests defining "credentials appropriate" and provides recommended language. Agency Response: The Division has addressed the qualifications to be selected as a designated doctor in §180.21 which includes meeting certain training requirements as well as being on the approved doctor's list (ADL). It is not necessary to define the term as the meaning is understood when the rule is read as a whole.

§126.7(i): Several commenters request that sanctions be imposed against insurance carriers that provide the designated doctor with an analysis of the employee's medical condition that is false, misleading, or contains a misrepresentation.

Agency Response: The Division agrees. There are processes in place to deal with these types of activities and commenters are urged to report evidence of wrongdoing to the Division for review and possible follow-up action.

Comment: Several commenters state the employee or the employee's representative should be able to send a response to the designated doctor if the insurance carrier sends an analysis.

Agency Response: The Division disagrees. There is no statutory provision allowing this type of communication. The injured employee's treating doctor has the ability to provide records and an analysis to the designated doctor.

§126.7(i)(1): A commenter states that the treating doctor and insurance carrier should only be required to submit medical records to the designated doctor for the initial examination. He recommends that for repeat examinations, only the medical records not previously provided should be sent.

Agency Response: The Division agrees and has changed the language.

§126.7(i)(2): Several commenters recommend allowing the carrier and treating doctor to submit one set of medical records that may contain an analysis of the injured employee's medical condition, functional abilities, return-to-work opportunities, video-taped activities as this would help reduce the amount of paper used and save the designated doctor valuable storage space.

Agency Response: The Division agrees and has changed the language.

Comment: Some commenters state that requiring the medical records to be received by the designated doctor no later than the fifth working day is unreasonably short. A commenter provides a scenario where the appointment is scheduled to occur on the 14th day. Given five days mail time and delivery five days prior to the exam, there are only four days to process the medical information and mail it. The commenter recommends amending the language to require the medical records be mailed no later that the fifth working day prior to the exam. Another commenter provides a scenario in which the carrier may not be able to get the medical records to the designated doctor in time. A commenter states there are other means of verifying delivery, and that repeal of §102.5(d) will still require a method of verifying the designated doctor's receipt of a letter of clarification. The commenter also asserts that doctors are out of their offices and that adequate time should be allowed for them to respond.

Agency Response: The Division agrees with the commenters' recommendation to extend the time and the language has been changed to "mailed" to allow extra time. The Division disagrees that §102.5(d) should be repealed. Section 102.5(d) provides a date certain for determining the date of receipt when there is no verification of delivery required.

§126.7(i)(4)(A): Several commenters recommend changing "shall" to "may" since the designated doctor should be able to use his discretion when reporting that a carrier has not timely provided the medical records prior to the exam.

Agency Response: The Division disagrees. Without this notice the Division will not have a ready mechanism to identify potential violations and take appropriate actions.

§126.7(j): A commenter suggests that the type of information provided to the designated doctor for review by the injured employee should be specified, and provides recommended language.

Agency Response: The Division agrees and has made the change.

Comment: A commenter recommends replacing "feels appropriate" with language that is more objective such as "determines to be appropriate."

Agency Response: The Division agrees and has made the change.

§126.7(k): A commenter states that ordering additional tests should extend the designated doctor's time to file the report by seven days regardless of whether another doctor is used or the designated doctor performs the test. A few commenters recommend changing seven days to 14 days to allow sufficient time to locate a doctor and schedule the testing.

Agency response: The Division agrees and has changed the length of time to obtain the additional testing from seven to 10 days. The time to file the report when additional testing is required was also changed to 10 days. The time to locate a doctor and get the testing performed has been extended to 10 working days.

§126.7(k): A commenter states that it makes no sense to limit subsequent examinations to the same designated doctor for subsequent issues if those issues are different than those previously determined by a designated doctor. The commenter states that he should not be tied to the notion that one doctor should be assigned for all issues.

Agency Response: The Division disagrees that there should be multiple designated doctors based on subsequent issues being raised. Subsection (k) of this rule allows a designated doctor to refer the employee to other health care providers when necessary to determine the issue in question.

§126.7(n)(1): A commenter recommends substituting "used" in place of "reviewed" as some records are so large it would take multiple pages to list them all.

Agency Response: The Division disagrees. Use of "reviewed" is helpful in dispute resolution when issues arise regarding the medical evidence/information used to make the determination. This type of information may also be critical in reducing the number of letters for clarification regarding whether specific medical records were considered when making the determination.

§126.7(s): A commenter states this section is unnecessary and that all designated doctor exam requests are based on good cause. He feels the Division should not impose a 60-day hurdle for a carrier to get a subsequent designated doctor exam.

Agency Response: The Division disagrees. The 60-day prohibition, unless good cause for more frequent exams exist, is statutorily required by Labor Code §408.0041(b).

Comment: A commenter questions the statutory authority to limit the carrier's ability to request a designated doctor exam after the second anniversary of entitlement to SIBs. The commenter states the carrier is prohibited from requesting an RME under Labor Code §408.151 but not from requesting a designated doctor.

Agency Response: As the commenter stated, Labor Code §408.151 prohibits the carrier from requesting an RME after the second anniversary of entitlement to SIBs. Since a carrier is entitled by Labor Code §408.0041 to an RME if the carrier is not satisfied with the opinion of the designated doctor, allowing the carrier to request a designated doctor on the issue of the employee's ability to return to work more often that once per year would allow the carrier the opportunity and ability to request or require an RME on return to work more often that once annually. By restricting the carrier's access to the designated doctor on the issue of the ability of the employee to return to work after the second anniversary of entitlement to SIBs, the Division is restricting the carrier's ability to request/require an RME on return to work pursuant to §408.151.

§126.7(u): Several commenters recommend striking "This procedure may only be used to schedule one additional examination" as there is no statutory basis. Another commenter recommends deleting the last sentence as it is unclear whether the "one additional examination" is for the life of the claim or for the particular examination.

Agency Response: The Division has deleted subsections (u) and (v) which require the designated doctor to reschedule the exam when the doctor determines the employee is not able to return to work, or has not reached MMI, respectively as unnecessary.

Comment: A commenter requests clarification that the designated doctor should evaluate the employee regarding any type of return to work with any employer, not just the employer at the time of the injury.

Agency Response: The Division disagrees the clarification needs to made. Since neither the statute or the Division specified that the ability to return to work was with the pre-injury employer, the designated doctor should be determining the injured employee's ability to return to work in any capacity.

§126.7(w): A commenter recommends requiring the Division to notify the requesting party, within 10 days, if the Division elects to not request clarification and the specific reason for not doing so.

Agency Response: The Division disagrees that it needs to add this requirement to the rule. The Division currently has a process in place to perform this function and will continue to utilize this process.

Comment: A commenter questions the authority of the Division to request clarification from the designated doctor on issues the Division deems appropriate and believes there is no authority for letters of clarification.

Agency Response: The Division disagrees. Pursuant to Labor Code §402.021(b)(5) and Chapter 410, the Division has statutory authority to perform dispute resolution activities to resolve disputes. Requesting letters of clarification is one way for the Division to try and expedite dispute resolution.

Comment: A commenter states the Division does not have the authority to compel a designated doctor to be available to conduct another examination within 10 days of when the designated doctor receives the request.

Agency Response: The Division agrees in part and disagrees in part. Labor Code §408.0041(a) provides that the Commissioner may order, on his own motion, a designated doctor exam. Section 408.0041(b) provides that the exam shall be conducted with 21 days of the Commissioner's order. The language has been changed to require the rescheduled exam to be conducted within 21 days of the request by the Division.

Comment: A commenter states the rule is ambiguous and confusing. The commenter contends the requirement to respond to the letter of clarification within five days of receipt of the request, or within 10 days if the doctor requires a repeat examination, is impossible. Another commenter states that while there is a required response time when the doctor needs to reexamine the injured employee, there is no required timeframe for response when there is no need for a reexamination.

Agency Response: The Division agrees and has clarified the language.

Comment: A commenter states that not only should the opposing party be provided a copy of the request for clarification, but also it should have the opportunity to respond to the request, and suggested language.

Agency Response: The Division disagrees. Allowing the opposing party time to respond to the request for a letter of clarification will only prolong the dispute resolution process. Each party has the ability to request a letter of clarification. Also, each party has the ability to question/dispute the response provided from the designated doctor's response to the letter of clarification.

Comment: A commenter states that the Division's Appeals Panel has held that presumptive weight is given to an amended report regardless of whether the doctor amended the report for a proper reason, and that the "proper reason" criterion must continue. The commenter recommends that amended reports for improper reasons should be deemed invalid and not be considered.

Agency Response: The Division disagrees. If a party feels the report has been amended for an improper reason, the party should request dispute resolution. Evidence of wrongdoing (amending for improper reasons) should be submitted to the Division for review and appropriate action.

Comment: A commenter states that the Appeals Panel is split regarding whether a designated doctor who is no longer on the list is authorized to respond to a letter of clarification. The commenter recommends that a designated doctor need not be on the list to respond to the letter of clarification, but must be on the list to perform an examination.

Agency Response: The Division disagrees. There are several reasons why a designated doctor may no longer be on the designated doctor list (DDL). The reasons include, but are not limited to, the doctor being removed from the DDL or ADL by action of the Division, or the doctor retiring and closing the doctor's practice. Based on the fact that the designated doctor is a doctor selected by the Division to provide resolution to numerous issues, the Division expects designated doctors to comply with all requirements to be a designated doctor, including not being removed from the DDL or removing himself or herself voluntarily. To respond to a request for clarification regarding the doctor's report, the doctor must be on the DDL at the time of the request for clarification.

Comment: A commenter recommends language that would require the Division to contact the designated doctor if a party requested clarification. The recommended language would remove any discretion on the Division's part in determining if the clarification was appropriate.

Agency Response: The Division disagrees, as the Division's experience has been that all requests for letters of clarification are not valid, or the issues have previously been addressed.

Comment: A commenter requests that "clarification" be defined.

Agency Response: The Division disagrees. Clarification has a clear meaning and common understanding, which is to provide information or response to a question that would remove any confusion, or misunderstanding of what was previously provided or stated.

Comment: A commenter states letters of clarification should be used sparingly when there is true ambiguity about the interpretation/application of the Guides to the Evaluation of Permanent Impairment. Another commenter states that a request for clarification should not result in a reexamination. However, the commenter contends providing new medical evidence for the designated doctor to review and consider may be a good reason for a reexamination.

Agency Response: The Division agrees. The Division will use its discretion when determining when a letter of clarification is needed. A letter of clarification, in and of itself, does not automatically result in a reexamination. The designated doctor's review of the questions or any additional medical evidence determines the need for a reexamination.

§126.7(w)(1): Several commenters recommend amending the 10-day timeframe to 20 or 30 days to prevent the selection of a subsequent designated doctor.

Agency Response: The Division agrees. Labor Code §408.0041(b) provides the exam shall be conducted with 21 days of the Commissioner's order. The language has been changed to require the rescheduled exam to be conducted within 21 days of the Commissioner's order.

§126.7(w)(2): Several commenters recommend adding language that will clarify that selection of an alternate designated doctor is appropriate if the designated doctor refuses to respond to a letter of clarification.

Agency Response: The Division disagrees. The determination to select a subsequent designated doctor needs to be reviewed by the Division on a case-by-case basis due to unforeseen circumstances encountered by the designated doctor, or based on the reason for the non-response. Therefore, the determination to select a subsequent designated doctor will be addressed through internal procedure and training of Division staff.

§126.7(w)(2): A commenter states that there should be reasonable opportunity for repeat examinations to prevent "gaming" of the system by repeatedly asking for letters of clarification in hopes that the designated doctor cannot make the deadline.

Agency Response: The Division agrees. The timeframe to reschedule a repeat examination has been extended to within 21 days from the date of the Commissioner's order in §126.7(w)(2).

For, with changes: Rehab for Workers; Texas Association of School Boards; ECAS WC Services; Texas Mutual Insurance Company; Association of Fire & Casualty Insurers of Texas; Insurance Council of Texas; TIRR Systems; Texas Medical Association; Office of Injured Employee Counsel; Lockheed Martin Aeronautics Company; The Boeing Company; Medical Equation, Inc.; HealthSouth Corporation; and Various Individuals.

Against: An individual.

The amendments to §126.5 and §126.6 and new §126.7 are adopted under Labor Code §§408.004, 408.0041, 408.151, 402.00111, and 402.061. Section 408.004 provides for required medical examinations. Section 408.0041 provides for designated doctor examinations. Section 408.151 provides for required medical examinations and designated doctor examinations during supplemental income benefits. Section 402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code and other laws of this State. Section 402.061 authorizes the Commissioner to adopt rules necessary to administer the Act.

§126.5. Entitlement and Procedure for Requesting Required Medical Examinations.

(a) A doctor who has contracted with or is employed by an authorized workers' compensation health care network established under Insurance Code Chapter 1305, (network doctor) may not perform a required medical examination, as those terms are used under the Texas Workers' Compensation Act (the Act), for an employee receiving medical care through the same network. It is the responsibility of the requesting party to ensure the doctor selected does not have a disqualifying association.

(b) The Division may authorize a required medical examination (RME) for any reason set forth in the Act, Texas Labor Code §408.004, §408.0041, or §408.151 at the request of the insurance carrier (carrier). The request shall be made in the form and manner prescribed by the Division. A carrier is not entitled to take action with respect to benefits based on, and the Division shall not consider, a report of an RME doctor that was not approved or obtained in accordance with this section.

(c) Carriers are entitled to RMEs by a doctor of their choice in accordance with this subsection as follows:

(1) Pursuant to Texas Labor Code §408.004, once every 180 days, to resolve any questions about the appropriateness of the health care received by the injured employee (employee). The carrier's first RME may be requested at any time after the date of injury. A subsequent examination may be requested once every 180 days after the first examination and must be performed by the same doctor unless otherwise approved by the Division. This paragraph only applies to requests for required medical examinations of employees not receiving medical treatment through an authorized workers' compensation health care network.

(2) For the purpose of evaluating a designated doctor's determination on the issues listed under Labor Code §408.0041, a carrier is entitled to an examination under this subsection only after a Designated Doctor exam under §126.7 of this title (relating to Designated Doctor Examinations: Requests and General Procedures).

(3) For the purpose of evaluating a designated doctor's determination pursuant to Texas Labor Code §408.151, to determine if the employee's medical condition resulting from the compensable injury has improved sufficiently to allow the employee to return to work. For the purposes of this paragraph, the carrier may not require an employee to submit to an RME more than once per year if:

(A) an employee is receiving supplemental income benefits on or after the second anniversary of the date of the employee's initial entitlement to supplemental income benefits, and

(B) in the year preceding the request for the RME, the employee's medical condition resulting from the compensable injury had not improved sufficiently to allow the employee to return to work during that year.

(d) The doctor selected to perform an RME must be on the Division's approved doctors list and, if the purpose of the examination is to evaluate maximum medical impairment (MMI) and/or permanent impairment following a designated doctor examination, be authorized to assign impairment ratings under §130.1(a) of this title (relating to Certification of Maximum Medical Improvement and Evaluation of Permanent Impairment).

(e) Except for an examination under subsection (c)(2) and (3) of this section, the Division shall not require an employee to submit to a medical examination at the carrier's request until the carrier has made an attempt to obtain the agreement of the employee for the examination as required by this subsection. The carrier shall notify the Division in the form and manner prescribed by the Division of any agreement or non-agreement by the employee regarding the requested examination. An examination of an employee by a doctor selected by the carrier shall be requested as follows:

(1) Prior to requesting an RME from the Division, the carrier shall send a copy of the request to the employee and the employee's representative (if any) in the manner prescribed by subsection (g) of this section in an attempt to obtain the employee's agreement to the examination.

(2) The carrier shall give the employee 15 days to agree to the examination. The 15-day period begins on the date the carrier sends the request to the employee and the employee's representative (if any). Though the employee has 15 days to respond to the request, the carrier is not prohibited from contacting the employee or the employee's representative (if any) by telephone to discuss the request and obtain the employee's or the representative's response.

(3) The carrier shall send the request to the Division after either obtaining the employee's answer to the request or when the employee fails to respond after the 15-day period.

(f) The carrier shall send a copy of the request for a required medical examination required by subsection (e) of this section to the employee and the employee's representative (if any) by facsimile or electronic transmission if the carrier has been provided with a facsimile number or email address for the recipient, otherwise, the carrier shall send the request by other verifiable means.

(g) The carrier shall maintain copies of the request for a required medical examination and shall also maintain verifiable proof of successful transmission of the information. For these purposes, verifiable proof includes, but is not limited to, a facsimile confirmation sheet, certified mail return receipt, delivery confirmation from the postal or delivery service, or a copy of the electronic submission.

(h) This section is effective on January 1, 2007 and a request for an RME under this section may be made on or after January 1, 2007.

§126.6. Required Medical Examination.

(a) When a request is made by the insurance carrier (carrier), or the Division, for a medical examination, the Division shall determine if an examination should occur. The Division shall grant or deny the request within seven days of the date the request is received by the Division. A copy of the action of the Division shall be sent to the injured employee (employee), the employee's representative (if any), and the carrier. The notice shall explain the circumstances under which an employee may experience loss of benefits and penalty exposure for failing to attend the examination as well as the need to reschedule a missed examination. An agreement between the parties for an examination under §126.5 of this title (relating to Entitlement and Procedure for Requesting Required Medical Examinations) that the carrier has a right to has the same effect as the action of the Division.

(b) All examinations required under this section must be scheduled to occur within 30 days after receipt of the notice, with at least 10 days notice to the employee and the employee's representative (if any). If a scheduling conflict exists, the employee and the doctor shall contact each other. The doctor or the employee who has the scheduling conflict must make contact at least 24 hours prior to the appointment. The 24-hour requirement will be waived in an emergency situation (such as a death in the immediate family or a medical emergency). The rescheduled examination shall be set for a date within seven days of the originally scheduled examination, unless an extension is agreed upon by the employee and doctor. The extension may not be to a date later than the 30th day after the originally scheduled examination. In this event, the examining doctor

shall notify the carrier and the 10 days notice requirement does not apply to a rescheduled examination.

(c) The employee's treating doctor may be present at an examination scheduled with a doctor selected by the carrier. The employee's treating doctor may observe the conduct of the examination, and may consult with the examining doctor about the course of the employee's treatment. The employee's treating doctor shall not otherwise participate in, impede, or advise the employee not to cooperate with the examination. In initially scheduling the examination, a reasonable attempt shall be made to accommodate the schedule of the treating doctor if the employee wants the treating doctor to attend the examination and the treating doctor is willing to do so. However, once an examination is scheduled based on the treating doctor's availability, the examination shall not be delayed, canceled, or rescheduled due to the treating doctor's scheduling conflicts unless:

(1) the required medical examination (RME) doctor agrees to the rescheduling; or

(2) the examination was canceled by the RME doctor.

(d) If the RME doctor, selected by a carrier, refuses to allow the treating doctor to attend the examination, the carrier shall cancel the appointment and request that another doctor be approved for the RME. If reasonable notice is not provided to the employee and the employee's representative (if any), the carrier shall be liable for any reasonable travel expenses incurred by the employee and for the payment for the treating doctor's attendance at a refused appointment. This subsection shall not apply to situations where the treating doctor is not able to attend the examination due to any form of scheduling conflict.

(e) An RME doctor, selected by the carrier or the Division, who conducts an examination regarding the appropriateness of the health care received by the employee, shall complete a medical report that includes objective findings of the examination and an analysis that explains how the medical condition and objective findings lead to the conclusion reached by the doctor. In addition, the RME doctor shall file the report with the insurance carrier by facsimile or electronic transmission, and shall file the report with the employee and the employee's representative (if any) by facsimile or by electronic transmission if the RME doctor has been provided with a facsimile number or email address for the recipient, otherwise, the RME doctor shall send the report by other verifiable means. Written notice is verifiable when it is provided from any source in a manner that reasonably confirms delivery to the party. This may include an acknowledged receipt by the injured employee or insurance carrier, a statement of personal delivery, confirmed by e-mail, confirmed delivery by facsimile, or some other confirmed delivery to the home or business address. The goal of this requirement is not to regulate how a system participant makes delivery of a report or other information to another system participant, but to ensure that the system participant filing the report or providing the information has verifiable proof that it was delivered.

(f) An RME doctor who, subsequent to a designated doctor's examination, determines the employee has reached maximum medical improvement (MMI) or who assigns an impairment rating, shall complete and file the report as required by §130.1 and §130.3 of this title (relating to Certification of Maximum Medical Improvement and Evaluation of Permanent Impairment and Certification of Maximum Medical Improvement and Evaluation of Permanent Impairment by Doctor Other than the Treating Doctor). Otherwise, the RME doctor shall not certify MMI or assign an impairment rating. If the RME doctor disagrees with the designated doctor's opinion regarding MMI, the RME doctor's report shall explain why the RME doctor believes the designated doctor was mistaken or why the designated doctor's opinion is no longer valid. Other reports shall be completed in the form and manner prescribed by the Division and shall be sent to the carrier, the employee, the employee's representative, if any, the treating doctor, and Division no later than 10 days after the examination.

(g) An RME doctor who, subsequent to a designated doctor's examination, determines that the employee can return to work immediately with or without restrictions is required to file a Work Status Report, as described in §129.5 of this title (relating to Work Status Reports) within seven days of the date of the examination of the employee. This report shall be filed with the treating doctor and the carrier by facsimile or electronic transmission. In addition, the RME doctor shall file the report with the employee and the employee's representative (if any) by facsimile or by electronic transmission if the RME doctor has been provided with a facsimile number or email address for the recipient, otherwise, the RME doctor shall send the report by other verifiable means.

(h) An RME doctor who, subsequent to a designated doctor's examination, addresses issues other than those listed in subsections (f) and (g) of this section, shall file a narrative report within seven days of the date of the examination of the employee. This report shall be filed with the treating doctor and the carrier by facsimile or electronic transmission. In addition, the RME doctor shall file the report with the employee and the employee's representative (if any) by facsimile or by electronic transmission if the RME doctor has been provided with a facsimile number or email address for the recipient, otherwise, the RME doctor shall send the report by other verifiable means.

(i) A doctor who conducts an examination solely under the authority of this rule shall not be considered a designated doctor under the Labor Code §408.0041, §408.122 or §408.125. Examinations with a designated doctor are not subject to any limitations under the provisions for RMEs.

(j) A carrier may suspend temporary income benefits (TIBs) if an employee, without good cause, fails to attend an RME required pursuant to Labor Code §408.0041(f).

(1) In the absence of a finding by the Division to the contrary, a carrier may presume that the employee did not have good cause to fail to attend the examination if by the day the examination was originally scheduled to occur the employee has both:

(A) failed to submit to the examination; and

(B) failed to contact the RME doctor's office to reschedule the examination in accordance with subsection (b) of this section.

(2) If, after the carrier suspends TIBs pursuant to this section, the employee contacts the RME doctor to reschedule the examination, the RME doctor shall reschedule the examination as soon as possible, but not later than the 30th day after the employee contacted the doctor. The insurance carrier shall re-initiate TIBs effective as of the date the employee submitted to the examination. The re-initiation of TIBs shall occur no later than the seventh day following:

(A) the date the carrier was notified that the employee attended the examination; or

(B) the date that the carrier was notified that the Division found that the employee had good cause for not attending the examination.

(3) An employee is not entitled to TIBs for a period during which the carrier was entitled to suspend benefits pursuant to this section unless the employee later submits to the examination and the Division finds or the carrier determines that the employee had good cause to fail to attend the appointment.

(k) An employee who, without good cause, fails or refuses to appear at the time scheduled for an examination authorized by this section may be assessed an administrative penalty under Labor Code §408.004 and §408.0041. An employee who fails to submit to an examination at the carrier's request when the carrier selected doctor refuses to allow the treating doctor to attend the examination or when the RME doctor cancels the examination does not commit an administrative violation.

(l) The Division shall require examinations requiring travel of up to 75 miles from the employee's residence, unless the treating doctor certifies that such travel may be harmful to the employee's recovery. Travel over 75 miles may be authorized if good cause exists to support such travel. The carrier shall pay reasonable travel expenses incurred by the employee in submitting to any required medical examination, as specified in Chapter 134 of this title (relating to Benefits--Guidelines For Medical Service, Charges, and Payments).

(m) This section is effective on January 1, 2007 and a request for an RME under this section may be made on or after January 1, 2007.

§126.7. Designated Doctor Examinations: Requests and General Procedures.

(a) The Division may require a medical examination by a designated doctor at the request of the insurance carrier, an injured employee (employee), the employee's representative, if any, the medical advisor, or on its own motion. A doctor who has contracted with or is employed by an authorized workers' compensation health care network established under Chapter 1305, Insurance Code, (network doctor) may not perform a designated doctor examination, as those terms are used under the Texas Workers' Compensation Act, for an employee receiving medical care through the same network.

(b) The request shall be made in the form and manner prescribed by the Division.

(c) A designated doctor examination shall be used to resolve questions about the following:

(1) the impairment caused by the employee's compensable injury;

(2) the attainment of maximum medical improvement (MMI);

(3) the extent of the employee's compensable injury;

(4) whether the employee's disability is a direct result of the work-related injury;

(5) the ability of the employee to return to work (RTW); or

(6) issues similar to those described by paragraphs (1) - (5) of this subsection.

(d) The report of the designated doctor is given presumptive weight regarding the issue(s) in question and/or dispute, unless the preponderance of the evidence is to the contrary.

(e) The Division, within 10 days after approval of a valid request, shall issue a written notice that assigns a designated doctor; requires an exam to be conducted on a date no earlier than 14 days, but no later than 21 days from the date of the written notice; and notify the designated doctor, the employee, the employee's representative, if any, and the insurance carrier that the designated doctor will be directed to examine the employee. The written notice shall:

(1) indicate the designated doctor's name, license number, practice address and telephone number, and the date and time of the examination or the date range for the examination to be conducted;

(2) explain the purpose of the designated doctor examination;

(3) require the employee to submit to an examination by the designated doctor; and

(4) require the treating doctor and insurance carrier to forward all medical records in compliance with subsection (i)(3) of this section.

(f) The designated doctor's office and the employee shall contact each other if there exists a scheduling conflict for the designated doctor appointment. The designated doctor or the employee who has the scheduling conflict must make the contact at least 24 hours prior to the appointment. The 24-hour requirement will be waived in an emergency situation (such as a death in the immediate family or a medical emergency). The rescheduled examination shall be set to occur within 21 days of the originally scheduled examination. Within 24 hours of rescheduling, the designated doctor shall contact the Division's field office and the insurance carrier with the time and date of the rescheduled examination. If the examination cannot be rescheduled within 21 days, the designated doctor shall notify the Division and the Division shall select a new designated doctor.

(g) An insurance carrier may suspend temporary income benefits (TIBs) if an employee, without good cause, fails to attend a designated doctor examination.

(1) In the absence of a finding by the Division to the contrary, an insurance carrier may presume that the employee did not have good cause to fail to attend the examination if by the day the examination was originally scheduled to occur the employee has both:

(A) failed to submit to the examination; and

(B) failed to contact the designated doctor's office to reschedule the examination in accordance with subsection (f) of this section.

(2) If, after the insurance carrier suspends TIBs pursuant to this subsection, the employee contacts the designated doctor to reschedule the examination, the designated doctor shall schedule the examination to occur as soon as possible, but not later than the 21st day after the employee contacted the doctor. The insurance carrier shall reinstate TIBs effective as of the date the employee submitted to the examination unless the report of the designated doctor indicates that the employee has reached MMI or is otherwise not eligible for income benefits. The re-initiation of TIBs shall occur no later than the seventh day following:

(A) the date the insurance carrier was notified that the employee submitted to the examination; or

(B) the date that the carrier was notified that the Division found that the employee had good cause for not attending the examination.

(3) An employee is not entitled to TIBs for a period during which the insurance carrier suspended benefits pursuant to this subsection unless the employee later submits to the examination and the Division finds or the insurance carrier determines that the employee had good cause for failure to attend the examination.

(h) If at the time the request is made, the Division has previously assigned a designated doctor to the claim, the Division shall use that doctor again, if the doctor is still qualified and available. Otherwise, the Division shall select the next available doctor on the Division's Designated Doctor List (DDL) who:

(1) has not previously treated or examined the employee within the past 12 months and has not examined or treated the employee

with regard to a medical condition being evaluated in the designated doctor examination;

(2) does not have any disqualifying associations as described in §180.21 of this title (relating to Division Designated Doctor List); and

(3) has credentials appropriate to the issue in question and the employee's medical condition.

(i) The designated doctor is authorized to receive the employee's confidential medical records to assist in the resolution of a dispute under this section without a signed release from the employee.

(1) The treating doctor and insurance carrier shall provide to the designated doctor copies of all the employee's medical records in their possession relating to the medical condition to be evaluated by the designated doctor. For subsequent examinations with the same designated doctor, only those medical records not previously sent must be provided.

(2) The treating doctor and insurance carrier may also send the designated doctor an analysis of the employee's medical condition, functional abilities, and return-to-work opportunities. The analysis may include supporting information such as videotaped activities of the employee, as well as marked copies of medical records. If the insurance carrier sends an analysis to the designated doctor, the insurance carrier shall send a copy to the treating doctor, the employee, and the employee's representative, if any. If the treating doctor sends an analysis to the designated doctor, the treating doctor shall send a copy to the insurance carrier, the employee, and the employee's representative, if any.

(3) The treating doctor and insurance carrier shall ensure that the required records and analyses (if any) are mailed to the designated doctor no later than the fifth working day prior to the date of the designated doctor examination.

(4) If the designated doctor has not received the medical records or any part thereof at least one working day prior to the examination, the designated doctor shall:

(A) report this violation to the Division's Compliance and Practices section; and

(B) reschedule the examination in accordance with subsection (f) of this section. The doctor shall conduct the rescheduled examination regardless of whether or not the complete medical record has been timely received.

(j) The designated doctor shall review the employee's medical records, including an analysis of the employee's medical condition, functional abilities and return to work opportunities provided by the insurance carrier and treating doctor, as well as the employee's medical condition and history as provided by the injured employee, and shall perform a complete physical examination. The designated doctor shall give the medical records reviewed the weight the doctor determines to be appropriate.

(k) The designated doctor shall perform additional testing or refer an employee to other health care providers when necessary to determine the issue in question. Any additional testing required for the evaluation is not subject to preauthorization requirements in accordance with the Labor Code §413.014 or Insurance Code, Chapter 1305. Any additional testing must be completed within 10 working days of the designated doctor's physical examination of the employee. The need for additional testing under this subsection extends the amount of time the designated doctor has to file the report by 10 working days.

(l) To avoid undue influence on the designated doctor:

(1) except as provided by subsection (i) of this section, only the employee or appropriate Division staff may communicate with the designated doctor prior to the examination of the employee by the designated doctor regarding the employee's medical condition or history;

(2) after the examination is completed, communication with the designated doctor regarding the employee's medical condition or history may be made only through appropriate Division staff; and

(3) the designated doctor may initiate communication with any doctor who has previously treated or examined the employee for the work-related injury or with a peer review doctor identified by the insurance carrier who examined the employee's claim.

(m) The insurance carrier, treating doctor, employee, or employee's representative, if any, may contact the designated doctor's office to ask about administrative matters such as whether the designated doctor received the records, whether the exam took place, or whether the report has been filed, or similar matters.

(n) A designated doctor who determines the employee has reached maximum medical improvement (MMI) or who assigns an impairment rating, or who determines the employee has not reached MMI, shall complete and file the report as required by §130.1 and §130.3 of this title (relating to Certification of Maximum Medical Improvement and Evaluation of Permanent Impairment and Certification of Maximum Medical Improvement and Evaluation of Permanent Impairment by Doctor Other than the Treating Doctor). The report shall be completed in the form and manner prescribed by the Division and shall be sent to the carrier, the employee, the employee's representative, if any, the treating doctor, and Division.

(o) A designated doctor who determines that the employee can return to work immediately with or without restrictions is required to file a Work Status Report, as described in §129.5 of this title (relating to Work Status Reports) within seven days of the date of the examination of the employee. This report shall be filed with the treating doctor and the carrier by facsimile or electronic transmission. In addition, the designated doctor shall file the report with the employee and the employee's representative (if any) by facsimile or by electronic transmission if the designated doctor has been provided with a facsimile number or email address for the recipient, otherwise, the designated doctor shall send the report by other verifiable means.

(p) A designated doctor who addresses issues other than those listed in subsections (n) and (o) of this section, shall file a narrative report within seven days of the date of the examination of the employee. This report shall be filed with the treating doctor and the carrier by facsimile or electronic transmission. In addition, the designated doctor shall file the report with the employee and the employee's representative (if any) by facsimile or by electronic transmission if the designated doctor has been provided with a facsimile number or email address for the recipient, otherwise, the designated doctor shall send the report by other verifiable means.

(q) The designated doctor shall maintain accurate records, including the employee records, analysis (including supporting information), and narratives provided by the insurance carrier and treating doctor, to reflect:

(1) the date and time of any designated doctor appointments scheduled with an employee;

(2) the circumstances regarding a cancellation, no-show or other situation where the examination did not occur as initially scheduled or rescheduled;

(3) the date of the examination;

(4) the date medical records were received from the treating doctor or any other person or organization;

(5) the date the medical evaluation report, including the narrative report described in subsection (n) of this section, was submitted to all parties;

(6) the name of all referral health care providers, date of appointments and reason for referral by the designated doctor; and

(7) the date the doctor contacted the Division for assistance in obtaining medical records from the insurance carrier or treating doctor.

(r) The insurance carrier shall pay any accrued income benefits, and shall begin or continue to pay weekly income benefits, in accordance with the designated doctor's report for the issue(s) in dispute, no later than five days after receipt of the report or five days after receipt of notice from the Division, whichever is earlier.

(s) The insurance carrier, the employee, and the employee's representative (if any) is not entitled to a subsequent designated doctor examination until the earlier of:

(1) the 60th day after the prior designated doctor examination was held; or

(2) the date the insurance carrier or the employee is found by the Division to have good cause, such as the inclusion of additional body parts (extent of injury).

(t) On or after the second anniversary of the initial award of Supplemental Income Benefits (SIBs), the insurance carrier may not require an employee who is receiving SIBs to submit to a designated doctor examination more than annually, if in the preceding year, the employee's medical condition resulting from the compensable injury has not improved sufficiently to allow the employee to return to work.

(u) Parties may file a request with the Division for clarification of the designated doctor's report. A copy of the request must be provided to the opposing party. The Division may contact the designated doctor if it determines that clarification is necessary to resolve an issue regarding the designated doctor's report. The Division, at its discretion, may request clarification from the designated doctor on issues the Division deems appropriate. To respond to the request for clarification, the designated doctor must be on the Division's DDL at the time the request is received by the Division. The designated doctor shall respond to the letter of clarification within five days of receipt. If, in order to respond to the request for clarification, the designated doctor has to reexamine the injured employee, the doctor shall:

(1) respond to the request for clarification advising of the need for an additional examination within five days of receipt and provide copies of the response to the parties specified in subsection (p) of this section; and

(2) conduct the reexamination within 21 days from the request by the Division at the location of the original examination.

(v) Upon receipt of a request for a benefit review conference, the Division shall resolve a dispute of the opinion of a designated doctor through the dispute resolution processes outlined in Chapters 140 - 147 of this title (relating to Dispute Resolution).

(w) This section is effective on January 1, 2007 and a request for a designated doctor under this section may be made on or after January 1, 2007.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 27, 2006.

TRD-200603953
Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Effective date: January 1, 2007
Proposal publication date: February 3, 2006
For further information, please call: (512) 804-4288

28 TAC §126.7

The Commissioner of the Division of Workers' Compensation, Texas Department of Insurance, adopts the repeal of §126.7, concerning suspension of temporary income benefits based on the opinion of a carrier-selected required medical examination doctor. The repeal is adopted without changes to the proposal published in the February 3, 2006, issue of the *Texas Register* (31 TexReg 670).

The repealed section is necessary to implement changes to the Labor Code §408.004 as a result of House Bill (HB) 7, enacted by the 79th Legislature, Regular Session, effective September 1, 2005. HB 7 changed the Labor Code §408.004 by limiting the reasons an injured employee (employee) may be required to attend a required medical examination prior to a designated doctor examination to the issue of appropriateness of the health care received by the employee. HB 7 also removed the provision for the suspension of temporary income benefits for failure to attend the required medical examination on that issue. HB 7 changed Labor Code §408.0041 to provide the designated doctor's opinion presumptive weight regarding entitlement and payment of income benefits and to address the suspension of temporary income benefits only for failure to attend a required medical exam after a designated doctor exam. These statutory changes provide procedural guidance to suspend benefits based on the opinion of the designated doctor or the actions (failure to attend) of the employee, rather than on a report or opinion of a required medical examination doctor.

Section 126.7 is repealed effective December 31, 2006, as it is no longer applicable since there are no situations in which temporary income benefits may be suspended based on the opinion of the required medical examination doctor. The Division simultaneously adopts new §126.7, which is effective January 1, 2007, regarding designated doctor exams, which is published elsewhere in this issue of the *Texas Register*. New §126.7 provides procedural guidance regarding the request for, and selection of, a designated doctor. The new section also provides procedural guidance regarding the responsibilities of the designated doctor.

Comment: A commenter objects to required medical exams (RMEs) performed by carrier-paid physicians as biased and believes the RMEs should only be performed by designated doctors.

Agency Response: The Division disagrees. Labor Code §§408.004, 408.0041, and 408.151 specifically provide for medical exams to be conducted by a doctor selected by the carrier.

For: None.

Against: An individual.

The repeal is adopted under the Labor Code §§408.0041, 402.00111, and 402.061. Section 408.0041 provides for designated doctor examinations. Section 402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code and other laws of this state. Section 402.061 provides the Commissioner the authority to adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 27, 2006.

TRD-200603952
Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Effective date: December 31, 2006
Proposal publication date: February 3, 2006
For further information, please call: (512) 804-4288

♦ ♦ ♦

CHAPTER 130. IMPAIRMENT AND SUPPLEMENTAL INCOME BENEFITS SUBCHAPTER A. IMPAIRMENT INCOME BENEFITS

28 TAC §130.2, §130.6

The Commissioner of the Division of Workers' Compensation, Texas Department of Insurance, adopts amendments to §130.2 and §130.6, concerning certification of maximum medical improvement (MMI), impairment rating (IR), and designated doctor examinations for MMI and IR. The amended sections are adopted with changes to the proposed text as published in the February 3, 2006, issue of the *Texas Register* (31 TexReg 675).

The adopted amendments are necessary to implement changes to Labor Code §408.123 and §408.0041, as a result of House Bill (HB) 7 enacted by the 79th Legislature, Regular Session. HB 7 amended Labor Code §408.123 to require the treating doctor provide information to the injured employee (employee) for disputing a certification of MMI and the assignment of an IR. The adopted amendments to §130.2 set forth the process for the treating doctor to provide the notification to the employee. Since these certifications may occur for both network and non-network health care services, the additional notification ensures that the employee is notified of the assignment of the MMI/IR as soon as reasonably possible. This notice will be provided to the employee, along with the Report of Medical Evaluation, through the processes outlined in §130.1.

The adopted amendments to §130.6 address changes made to Labor Code §408.0041. The amendments delete the procedures set forth in existing subsections (a) - (h) and (k) since these have been moved, with modifications as appropriate, to adopted §126.7, which is published elsewhere in this issue of the *Texas Register*. The new §126.7 addresses designated doctor exams in general. Where necessary, the Division has made grammatical changes to §130.2 and §130.6.

The adopted amendments to §130.2 address changes made to Labor Code §408.123. This section requires the treating doctor to examine the injured employee to determine if the employee has any permanent impairment as a result of the compensable injury. If the treating doctor is not authorized by the Division to certify MMI and assign an impairment rating, the doctor must refer the employee to another doctor that is authorized by the Division for the certification. At the conclusion of the examination the doctor shall provide the employee written notice that the certification may be disputed. As a result of public comment, changes were made to §130.2 to provide that at the end of the examination a separate written notice that certification may be disputed will be provided with the Report of Medical Evaluation, as required by §130.1, in English or Spanish or other language common to the employee. The notice will also contain information that the impairment rating becomes final within 90 days if not disputed by the employee or the employee's representative. The Division shall mail a notice to the treating doctor, employee, the employee's representative, if any, and the insurance carrier on the expiration of 98 weeks from the date the employee's Temporary Income Benefits (TIBs) began to accrue. The Division has also removed the requirement for rescheduled examinations due to a prospective date of MMI based on public comments.

The adopted amendments to §130.6 address changes made to Labor Code §408.0041. Section 130.6 provides procedural direction and guidance regarding the roles and responsibilities of the designated doctor when performing an examination for MMI/IR. Subsection (a) states any evaluation for maximum medical improvement (MMI) and/or impairment rating (IR) shall be conducted in accordance with §130.1.

Subsection (b) provides direction regarding the expectation of the designated doctor based on the absence or existence of MMI/IR certifications, and prohibits a designated doctor, who determines the employee has not reached maximum medical improvement (MMI) from assigning an impairment rating.

Subsection (f) provides that when the designated doctor issues multiple impairment ratings due to an unresolved dispute over the extent of the employee's compensable injury, the carrier shall pay benefits based on the conditions that have not been disputed by the carrier or have been finally adjudicated by the Division to be part of the compensable injury. A date on which a designated doctor may be requested has been added to the section as a result of comments.

§130.2

General: A commenter believes the estimated savings in the first 30 - 60 days would be $90 million for functional capacity exams, including MRIs and EMGs. Another commenter complains that the rules only have minor changes and are flawed. The commenter believes that HB 7 was needed but the proposed rules do not correct the flaws in the system.

Agency Response: The amendments to §130.2 address the new requirement of HB 7 for the treating doctor to provide the injured employee a notice of MMI/IR, and that the rating may become final if not disputed within 90 days of receipt. The Division is unaware of the source of the estimated cost savings and the questions posed by the commenter are not germane to the proposed rule. The Division agrees that HB 7 was needed and believes that the rules comply with the requirements of HB 7. The Division believes that the rules improve the existing process and provide the necessary process for employees to receive notice of MMI/IR.

Comment: A commenter feels Labor Code §408.123 does not place the burden to notify the employee on the treating doctor.

Agency Response: The Division disagrees. Labor Code §408.123 clearly places the responsibility to provide the notice to the employee on the treating doctor.

Comment: Some commenters recommend that the Division include the notice required by Labor Code §408.123 in the instructions of the DWC Form-69 as the instructions are on the back side of the form rather than requiring a new form as this will provide a more streamlined process.

Agency Response: The Division disagrees. The instructions provide guidance in completing the form. Even if provided in the instructions, the Division does not expect many injured employees would read the instructions since they will not be completing the form. Additionally, the instructions are on the back of the DWC-69 only if copied onto the back of the form. It is the Division's experience that most DWC-69s received by the Division include only the front page of the form, not the instructions. The intent of Labor Code §408.123 is to provide the injured employee a separate and distinct notice that MMI/IR had been assigned and that the employee can dispute it. Including the language on the DWC-69 would not meet this intent.

§130.2(a)(3): A commenter states the rule appears to meet the intent of Labor Code §408.123 and requests that the notice be required in English and Spanish. The commenter also requests the Division create a standard form and make it available to all doctors. Several commenters request that the notice include language that the impairment rating may become final if not disputed in 90 days.

Agency Response: The Division agrees. The language has been changed to require the notice to be in English, or Spanish, or other common language to the employee. The Division does not believe that a separate form is necessary but will prepare and post on the Division's webpage a sample notice that contains language that can be downloaded and used by the doctor's office that meets the rules requirements. The language will include language regarding the 90-day timeframe for disputing the assigned IR.

Comment: Several commenters feel the requirement to provide the notice at the conclusion of the exam is unreasonable and recommend that the notice be provided no later than five days after the conclusion of the exam. The commenters assert that this will allow the doctor time to complete necessary calculations and prevent the injured employee from having to wait at the doctor's office. Another commenter recommends deleting this paragraph as redundant and requests clarification of "conclusion of the exam."

Agency Response: The Division agrees and has changed the requirement. The notice must be provided with the Report of Medical Examination, which is filed no later than seven days after the conclusion of the exam in accordance with §130.1. The Division disagrees that the paragraph is redundant. Labor Code §408.123 requires the Commissioner to adopt a rule to require provision of the notice by the treating doctor. The Division disagrees that "conclusion of the exam" needs to be clarified because the Report of Medical Evaluation is provided in accordance with §130.1(d)(2) which provides the necessary direction for filing the report.

Comment: Several commenters recommend that "the employee's representative, if any" be added to the list of recipients of the 98 week notice. Other commenters recommend sending the letter to the insurance carrier. Another commenter suggests that the treating doctor provide a copy of the notice to the insurance carrier and the injured employee's attorney, if any. A commenter also requests clarification that both the DWC-69 and the notice are required to be sent.

Agency Response: The Division agrees and has added language to notify the injured employee's representative, if any, as well as the insurance carrier. The Division clarifies that the notice is required or addition to the DWC-69.

Comment: Several commenters don't feel the proposed language meets the requirements of Labor Code §408.123(c) because it does not provide information regarding how to dispute the impairment rating. The commenter provided recommended language.

Agency Response: The notice is required to advise the injured employee that the employee may dispute the MMI/IR. The language the Division will post on its webpage will also advise the injured employee, or the employee's representative, to contact the Division to dispute the MMI/IR by requesting a benefit review conference. An unrepresented injured employee may contact the Division in any manner to dispute the assigned MMI date and impairment rating and request a benefit review conference. If the injured employee is represented by counsel, the representative must file the dispute and request dispute resolution in accordance with Labor Code Chapter 410.

§130.6: Several commenters feel requiring the designated doctor to reschedule the exam if MMI is anticipated within 60 days will get the subsequent exam scheduled quicker resulting in less administrative cost to the carrier; however, they also feel that this may be used by the designated doctor to prolong the MMI date to ensure a second exam. A commenter states that the designated doctor could possibly no longer be qualified to examine the employee. A commenter contends that this requirement may not work effectively for traveling designated doctors.

Agency Response: The Division disagrees that designated doctors will abuse this provision. However, the Division has removed the requirement for rescheduled examinations based on a prospective date of MMI. Prospective dates are not statutorily required and are not applicable for claims administration purposes. The Division reminds traveling designated doctors that they should be prepared to meet the requirements of the statute and rule if they are going to be traveling designated doctors.

§130.6(b): Several commenters question why different requirements exist regarding explanations of why the injured employee has reached, or not reached, MMI/IR.

Agency Response: Different circumstances require different actions on the part of the designated doctor. Subsection (b)(2) addresses the designated doctor's responsibilities when only the date of MMI is in question, subsection (b)(3) addresses the designated doctor's responsibilities when only the impairment rating is in question, and subsection (b)(4) addresses the designated doctor's responsibilities when both MMI and impairment rating are in question and the designated doctor determines the injured employee has not reached MMI.

Comment: A commenter questions whether the doctor will be paid for multiple exams when issuing multiple impairment ratings due to no agreement (dispute) regarding the extent of injury.

Agency Response: The designated doctor will not be paid for multiple exams for issuing multiple impairment ratings. The designated doctor will be able to bill for each additional report of medical evaluation.

§130.6(b)(4): Several commenters request that the requirement to assign a prospective date of MMI if the designated doctor determines the injured employee has not reached MMI be deleted.

Agency Response: The Division agrees and has removed the requirement to assign a prospective date of MMI and to reschedule the examination based on a prospective date.

§130.6(e): Several commenters recommend clarifying that additional testing not subject to preauthorization is still subject to retrospective review. They contend that this allows carriers the means to ensure redundant or excessive testing is not being performed and are concerned that system medical costs will increase if the provision is not clarified.

Agency Response: The Division disagrees. A designated doctor should be able to obtain testing as required to make an assessment of the injured employee's condition without fear of not being reimbursed. If a party has evidence that a designated doctor is abusing this provision, this evidence should be submitted to the Division for appropriate enforcement action.

§130.6(f): Several commenters recommend changing the language to reflect "accepted" rather than "not disputed" and contend that it would provide a clearer and more affirmative response regarding the requirement to pay benefits.

Agency Response: The Division disagrees. There is an existing mechanism for reporting to the injured employee and the Division any disputed body parts and conditions. There is no mechanism for reporting what body parts and conditions have been accepted.

For, with changes: Rehab for Workers; ECAS; TIRR Systems; Lockheed Martin Aeronautics Company; Office of Injured Employee Counsel; American Insurance Association; Texas Mutual Insurance Company; Texas Association of School Boards; The Boeing Company; Insurance Council of Texas; Property Casualty Insurers of America; Association of Fire and Casualty Insurers of Texas; Senator Gonzalo Barrientos; and various individuals.

Against: An individual.

The amendments to §130.2 and §130.6 are adopted under the Labor Code §§408.0041, 408.123, 402.061, and 402.00111. Section 408.0041 provides for designated doctor examinations. Section 408.123 provides for certification of maximum medical improvement and evaluation of impairment ratings. Section 402.061 requires the Commissioner of Workers' Compensation to adopt rules necessary for the implementation and enforcement of the Texas Workers Compensation Act. Section 402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under Labor Code Title 5.

§130.2. Certification of Maximum Medical Improvement and Evaluation of Permanent Impairment by the Treating Doctor.

(a) A treating doctor shall either examine the injured employee (employee) and determine if the employee has any permanent impairment as a result of the compensable injury as soon as the doctor anticipates that the employee will have no further material recovery from or lasting improvement to the work-related injury or illness, based on reasonable medical probability, or have another authorized doctor do so.

(1) A treating doctor who finds that the employee has permanent impairment but who is not authorized to assign impairment ratings as provided in §130.1 of this title (relating to Certification of Maximum Medical Improvement and Evaluation of Permanent Impairment), shall make a referral to a doctor who is authorized to do so on behalf of the treating doctor. Even if the treating doctor is so authorized, the doctor may choose to have another authorized doctor evaluate the employee for maximum medical improvement (MMI) and impairment in the place of the treating doctor. However, this evaluation shall be considered to be the report of the treating doctor.

(2) Other than subsections (c) and (d) of this section, nothing in this section requires a treating doctor to schedule an examination if the employee has been released from treatment and is not receiving temporary income benefits (TIBs). For example, when the patient is treated and released without further treatment for a minor injury, the treating doctor is not required to schedule and conduct an examination for MMI and permanent impairment.

(3) At the conclusion of an examination in which the treating doctor, or the certifying doctor in the event that the treating doctor is not authorized to certify MMI and assign an impairment rating, determines that the employee has reached maximum medical improvement and assigns an impairment rating, the doctor shall provide the employee with a written notice that the certification may be disputed. The notice shall be provided as a separate document included with the Report of Medical Evaluation provided in accordance with §130.1 of this title. The notice must be provided in English, Spanish, or other language common to the employee, and shall include the following information:

(A) the date of maximum medical improvement;

(B) the assigned impairment rating;

(C) a statement that the impairment rating may become final if not disputed within 90 days, and if the employee, or the employee's representative, disagrees with the certification, they may dispute the certification by contacting the Division of Workers' Compensation and requesting a benefit review conference;

(D) the address and phone number of the local field office of the Division of Workers' Compensation (Division); and

(E) a statement that the employee may contact the Division for more information at 1-800-252-7031.

(b) A certification of MMI and assignment of an impairment rating shall be performed and reported in accordance with the requirements of §130.1 of this title.

(c) The Division shall mail a notice to a treating doctor, the employee, the employee's representative, if any, and the insurance carrier on the expiration of 98 weeks from the date the employee's TIBs began to accrue if the employee is still receiving TIBSs. The Division's notice shall advise the treating doctor of the requirements under Chapter 408, Subchapter G of the Texas Workers' Compensation Act, and this section, and require that an impairment rating report be mailed to the Division no later than 104 weeks from the date TIBs began to accrue.

(d) Upon receipt of the Division's notice required in subsection (c) of this section, the treating doctor shall schedule and conduct an examination of the employee in accordance with §130.1 of this title to certify a MMI date (if earlier than the statutory MMI date as defined in §130.4 of this title (relating to Presumption that Maximum Medical Improvement (MMI) has been Reached and Resolution when MMI has not been Certified) and to assign an impairment rating. A treating doctor who is not authorized to certify MMI and assign impairment ratings, shall make a referral to a doctor who is authorized to do so on behalf of the treating doctor.

(e) If the carrier has not received a report of medical evaluation by the date of statutory MMI:

(1) the carrier may suspend TIBs and is not required to initiate impairment income benefits (IIBs) until such time as it receives a report of an impairment rating assigned in accordance with §130.1 of this title;

(2) the carrier or the employee may request the appointment of a designated doctor under §126.7 of this title (relating to Designated Doctor Examinations: Requests and General Procedures); and/or

(3) a carrier may make a reasonable assessment of what it believes the true impairment rating should be and, if it does so, shall initiate IIBs within five days of making the assessment. The carrier shall continue to pay IIBs until the assessment is paid in full or is superceded by an impairment rating assigned in accordance with §130.1 of this title.

§130.6. Designated Doctor Examinations for Maximum Medical Improvement and/or Impairment Ratings.

(a) Any evaluation relating to either maximum medical improvement (MMI), an impairment rating, or both, shall be conducted in accordance with §130.1 of this title (relating to Certification of Maximum Medical Improvement and Evaluation of Permanent Impairment).

(b) The designated doctor shall address the issue(s) in question and any issues the Division may request the designated doctor to consider and confine the report to only those issues.

(1) When there has been no prior certification of MMI, the designated doctor shall evaluate the injured employee (employee) for MMI, and if the doctor finds that the employee reached MMI, assign an impairment rating. If the designated doctor finds that the employee has not reached MMI, the doctor shall identify the reason(s) that the designated doctor does not believe the employee to have reached MMI.

(2) When there has been a prior certification of MMI and impairment rating and only the MMI date is in question, the designated doctor shall evaluate the date the employee reached MMI and shall not assign an impairment rating. If the certification of MMI in question was the treating doctor's certification and the designated doctor finds that the employee either was not at MMI or reached MMI on a date later than the treating doctor's certification, the designated doctor shall provide an explanation with clinical documentation to support why the employee had not reached MMI as of the date certified by the treating doctor.

(3) When the impairment rating is the only issue in question, the doctor shall assign an impairment rating based on the employee's medical condition on the MMI date.

(4) When MMI and permanent whole body impairment are in question and the designated doctor determines that the employee has not reached MMI, the designated doctor shall not assign an impairment rating.

(5) When the extent of the injury may not be agreed upon by the parties (based upon documentation provided by the treating doctor and/or insurance carrier or the comments of the employee regarding his/her injury), the designated doctor shall provide multiple certifications of MMI and impairment ratings that take into account the various interpretations of the extent of the injury so that when the Division resolves the dispute, there is already an applicable certification of MMI and impairment rating from which to pay benefits as required by the Act.

(c) When performing range of motion testing, if the AMA Guides specify that additional testing be performed because of consistency requirements, the designated doctor shall reschedule testing within seven days of the first date of testing unless there is no clinical basis for retesting, and then, the designated doctor shall document this in the narrative notes with the clinical explanation for not recommending re-examination.

(d) Range of motion, sensory, and strength testing should be performed by the designated doctor, when applicable. If this testing is not performed by the designated doctor, the health care provider performing the testing must have successfully completed Division approved training, must not have previously treated or examined the employee within the past 12 months, and must not have examined or treated the employee with regard to the medical condition being evaluated by the designated doctor. Use of another health care provider to perform testing under this subsection shall not extend the amount of time the designated doctor has to file the report and the designated doctor is responsible for ensuring that the requirements of this chapter are complied with.

(e) For testing other than that listed in subsection (d) of this section, the designated doctor may perform additional testing or refer the employee to other health care providers when deemed necessary to assess an impairment rating. Any additional testing required for the evaluation and rating, is not subject to preauthorization requirements in accordance with Labor Code §413.014 (relating to Preauthorization) and additional testing must be completed within seven working days of the designated doctor's physical examination of the employee. Use of another health care provider to perform testing under this subsection can extend the amount of time the designated doctor has to file the report by seven working days.

(f) If the designated doctor provided multiple certifications of MMI/impairment ratings by operation of subsection (b)(5) of this section, the insurance carrier shall pay benefits based on the conditions that have not been disputed, or have been finally adjudicated by the Division, to be part of the compensable injury.

(g) This section is effective January 1, 2007 and a request for a designated doctor under this section may be made on or after January 1, 2007.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 27, 2006.

TRD-200603956
Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Effective date: January 1, 2007
Proposal publication date: February 3, 2006
For further information, please call: (512) 804-4288

CHAPTER 130. IMPAIRMENT AND SUPPLEMENTAL INCOME BENEFITS

The Commissioner of the Division of Workers' Compensation, Texas Department of Insurance, adopts the repeal of §130.5 and §130.110, concerning impairment and supplemental income benefits. The repeal is adopted without changes to the proposal as published in the February 3, 2006, issue of the *Texas Register* (31 TexReg 678).

The repealed sections are necessary to implement new statutory provisions contained in House Bill (HB) 7, enacted by the 79th Legislature, Regular Session, effective September 1, 2005. HB 7 changed the Labor Code §408.0041 by expanding the list of

issues that a designated doctor may be asked to address to include the injured employee's (employee) ability to return to work, the extent of the injury, whether the employee's disability is a direct result of the injury and similar issues. As a result of the change, the designated doctor will now be asked to address issues that may affect the delivery of income benefits in general, rather than just impairment income benefits (IIBs) as is currently the case.

Section 130.5 and §130.110 are repealed effective December 31, 2006. In response to the HB 7 changes, §130.5 is repealed as the process for entitlement to, and request for, a designated doctor, applies to benefits in general, and the process for entitlement to and request for a designated doctor have been moved to new §126.7. Additionally, §130.110 is repealed due to the changes in Labor Code §408.0041 for designated doctor examinations and the ability of the employee to return to work. The process for, entitlement to, and requesting a designated doctor exam regarding the employee's ability to return to work after the second anniversary of entitlement to supplemental income benefits (SIBs) is also addressed in new §126.7. The combination of repealed §130.5 and §130.110 into new §126.7 will provide consistency throughout the designated doctor process regardless of the issue being addressed. The Division simultaneously adopts new §126.7, effective January 1, 2007, published elsewhere in this issue of the *Texas Register*. The adopted rules will permit compliance with statutory changes to the Labor Code §408.0041.

General: Several commenters support the repeal of the rules.

Agency Response: The Division appreciates the support.

For: Insurance Council of Texas, Association of Fire & Casualty Insurers of Texas.

Against: None.

SUBCHAPTER A. IMPAIRMENT INCOME BENEFITS

28 TAC §130.5

The repeal is adopted under the Labor Code §§408.0041, 402.00111, and 402.061. Section 408.0041 provides for designated doctor examinations. Section 402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code and other laws of this state. Section 402.061 provides the Commissioner the authority to adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 27, 2006.

TRD-200603954
Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Effective date: December 31, 2006
Proposal publication date: February 3, 2006
For further information, please call: (512) 804-4288

♦ ♦ ♦

SUBCHAPTER B. SUPPLEMENTAL INCOME BENEFITS

28 TAC §130.110

The repeal is adopted under the Labor Code §§408.0041, 402.00111, and 402.061. Section 408.0041 provides for designated doctor examinations. Section 402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code and other laws of this state. Section 402.061 provides the Commissioner the authority to adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 27, 2006.

TRD-200603955
Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Effective date: December 31, 2006
Proposal publication date: February 3, 2006
For further information, please call: (512) 804-4288

♦ ♦ ♦

CHAPTER 180. MONITORING AND ENFORCEMENT

SUBCHAPTER B. MEDICAL BENEFIT REGULATION

28 TAC §§180.21, 180.22, 180.28

The Commissioner of the Division of Workers' Compensation, Texas Department of Insurance, adopts amendments to §180.21 and §180.22 and new §180.28, concerning peer reviewers and designated doctors. The new and amended sections are adopted with changes to the proposed text as published in the February 3, 2006, issue of the *Texas Register* (31 TexReg 683).

The amendments and new sections are necessary to implement new statutory provisions contained in House Bill (HB) 7, enacted by the 79th Legislature, Regular Session. These rules are written to clarify qualifications and functions of designated doctors and peer reviewers. Adopted amendments to §180.21 and §180.22 implement the expanded role of designated doctors and define the role of peer reviewer under HB 7. New §180.28 establishes standards for peer review reports.

The Labor Code §408.0041 and §408.1225 address new requirements for a designated doctor and these have been added to §180.21. The requirements to be on the Division's Designated Doctor List (DDL) include additional training and testing to ensure proficiency in determining the injured employee's (employee) extent of injury, ability to return to work, and whether the employee's disability is the direct result of a work-related injury. Other changes to §180.21 include provisions to eliminate the appearance of bias by prohibiting a designated doctor from rendering an opinion if the doctor has a contract with, or is employed by, the workers' compensation health care network responsible for providing medical care to the employee, or if he has any other association with the employee, employer, or insurance carrier

(carrier) that may give the appearance of preventing the designated doctor from rendering an unbiased opinion.

Adopted §180.22 contains health care provider roles and responsibilities, including peer reviewers. It also specifies the authority under which a required medical exam (RME) may be conducted and lists issues the RME doctor may not address unless there has been a prior designated doctor exam on the specific issue.

HB 7 requires standards for a carrier to use peer reviews to determine the appropriateness of treatment related to an employee's compensable or job-related injury. The new and amended sections are applicable to medical benefits provided in the workers' compensation system including medical benefits provided to employees subject to a workers' compensation health care network established under Insurance Code Chapter 1305. The changes to §180.21 and §180.22 and new §180.28 are necessary to implement Labor Code §408.0231, which sets forth the requirements for the Commissioner to adopt rules regarding providers performing peer review functions for carriers, peer review standards, imposition of sanctions on doctors performing peer review functions, and other issues related to the quality of peer reviews. These adopted rules reflect the Division's efforts to address the following objectives regarding benefits of peer reviews as a result of stakeholder input as well as public comment: ensure the use of peer reviews for health care services provided in connection with a workers' compensation claim; curtail the carrier's ability to request multiple peer reviews of the same health care services or issues for a favorable decision; require the use of current, evidence-based treatment parameters; facilitate timely and appropriate medical treatments and services; control utilization of medical treatments and services; and control medical costs where appropriate. The intent of these rules is to improve the quality of health care provided to employees and to monitor peer review activities in the workers' compensation system. The implementation of peer review standards helps to ensure that health care providers performing peer reviews consider evidence-based medicine prior to making any determinations related to the review of medical care. The implementation of peer review standards may reduce excessive or inappropriate medical care while safeguarding the delivery of necessary medical care by requiring the treating doctor to identify, prescribe, and provide only appropriate health care.

As a result of public comments, changes have been made to §§180.21, 180.22 and 180.28 and are described more fully below in this preamble. Additionally, the adopted amendments to §180.21 and §180.22 remove unnecessary language to increase the clarity of the sections, reduce confusion, and address new statutory requirements of HB 7.

The Division will be issuing a bulletin to remind health care providers of the requirements of Labor Code §408.023 and §408.0231 and these rules.

These sections are intended to clarify the functions of and standards for designated doctors and peer review doctors.

Section 180.21 lays out the process for application to the Division's DDL, the requirements for admission to the DDL, and the process for notification to the doctor of admission, denial, suspension, or deletion from the DDL. The appeals process for a doctor who is suspended or deleted from the DDL is described in this section.

Subsection (a) provides a list of definitions for terms used in this section. It also identifies two new disqualifying associations that prevent a designated doctor from rendering an opinion: 1) having a contract with the same health care network responsible for providing medical care to the employee; or 2) having any other association with the employee, employer, or insurance carrier that may give the appearance of preventing the designated doctor from rendering an unbiased opinion.

Subsection (c) lays out the requirements for a doctor to be on the Division's DDL prior to January 1, 2007 and subsection (d) lays out the requirements for a doctor to be on the Division's DDL after January 1, 2007. The Division changed the date from September 1, 2006 to provide doctors sufficient time to obtain training and register to be on the DDL. As a result of public comments, changes have been made to subsection (d) to require the doctor to have successfully completed approved training and passed an exam rather than requiring board certification. The doctor must also have had an active practice for at least three years during his or her career. The Division has also changed subsections (d) and (e) to correct the time for renewal to biennial. Subsection (e) requires reapplication to the DDL every two years and completion of 12 additional hours of relevant training. Subsection (j) has been changed to provide 15 working days for a doctor to respond to the Commissioner's denial of the application to the DDL.

Subsection (m) provides the reasons a designated doctor may be deleted or suspended from the DDL. It also adds language related to the failure to notify the Division of conflicts caused by the doctor's and employee's association with the same workers' compensation health care network.

Section 180.22 specifies the authority under which an RME may be conducted and provides the list of issues the RME doctor may not address unless there has been a prior designated doctor exam on the specific issue. It also adds the employees' representative to the list of parties with whom the treating doctor communicates regarding the employee's ability to work or any work restrictions for the employee. Subsection (f) provides the responsibilities of an RME doctor and restrictions on the type and timing of examinations the RME doctor may perform.

Section 180.22 also contains health care provider roles and responsibilities, including peer reviewers, as required by Labor Code §408.023(h) and §408.0231(g). Subsection (g) provides the responsibilities of a peer review doctor and has been changed to define a peer review as an administrative review of the health care of a workers' compensation claim. Labor Code §408.023(h) allows an out of state doctor to perform utilization review but requires it to be performed under the direction of a doctor licensed in this state. Labor Code §408.0231(g) requires peer reviews to be performed by a doctor that holds the appropriate professional Texas license. The subsection has been changed to be consistent with both of these provisions of the Labor Code. Subsection (g) defines a peer reviewer, addresses any known conflicts of interest with the injured employee or the health care provider who rendered any health care being reviewed, and establishes the licensing requirements. If a health care provider, including a health care provider not licensed in Texas, does not comply with the statute and these rules, the Division may impose sanctions which include the following: restriction, suspension, or removal of the provider's ability to perform peer review on behalf of insurance carriers in the workers' compensation system, and other issues related to the quality of peer review. The Division will be monitoring health care providers to ensure they are in compliance with Labor Code §408.023 and §408.0231 and these rules to ensure

proper licensing or performing actions under the direction of a licensed Texas doctor.

New §180.28 contains the additional requirements of Labor Code §408.0231(g) and sets forth the peer review requirements, reporting, record keeping and sanctions, which includes parameters for the request and use of peer review reports. Subsection (a) has been changed and addresses the components of the peer reviewer's report. Additional language has been added to require a list of all medical records and other documents reviewed by the peer reviewer, including the dates of the documents reviewed. Language has been changed in subsection (b) to provide for situations where a subsequent peer review would be appropriate. Language has been added to subsection (c) to include the injured employee and injured employee's representative, if any, to the parties that receive a copy of the peer review report. Additionally, the term, "negatively impact" has been removed from the rules because this language is unnecessary, and use of the phrase "reduce income or medical benefits of an injured employee" is a sufficiently broad explanation. Subsection (d) has been changed to clarify the requirements that peer reviewers and carriers maintain requests, reports, and results for peer reviews so that the Division may monitor peer review use, activity and decisions. Subsection (e)(2) has been changed to reflect that the Commissioner may prohibit a doctor from conducting peer reviews for failure to consider all records provided for their review, as peer reviewers can only respond based on records that have been provided to them for review. As a result of public comment, a change has also been made to allow for an appeals mechanism through §180.27 for a doctor who has received a Division order prohibiting further peer reviews.

General: A commenter objects to online exams for designated doctors and wants the practice eliminated. The commenter believes that doctors pay other individuals to take the exam for them when the exam available is online.

Agency response: The Division understands the commenter's concern about people taking exams for other people. This is not how the system is intended to work. There are protocols in place to ensure that the appropriate person is taking the exam. The Division is revising training and testing requirements to comply with duties given to designated doctors by HB 7. A part of the revision will be to select training and testing vendors with adequate security protocols to ensure that the doctor being trained and/or tested is the person he or she claims for either personal or on-line testing.

§180.21(a): Several commenters agree with definition of "active practice."

Agency Response: The Division appreciates the comment.

§180.21(a)(2): A few commenters recommend adding language to specify that the influence be "improper influence" and to define "whose perception" is necessary to trigger the perception of improper influence as not all attempts to influence are improper. A commenter feels the definition of disqualifying association is too broad. The commenter provides an example of the state medical association trying to influence the conduct of its members as "influence" but not "improper influence."

Agency Response: The Division disagrees. The rule addresses any influence on a designated doctor that may be perceived based on the factual circumstances illustrated in the rule without consideration by Division staff as to its effect on a decision. A determination of a disqualifying association is not based on a belief, but facts as determined by Division staff.

Comment: A commenter questions whether a disqualifying association exists between a designated doctor and an RME doctor who has previously examined the employee if the two doctors share an affiliated practice. The commenter requests clarifying language that a mere association between a designated doctor and a doctor who has previously examined the employee is not a disqualifying association. The commenter also presents an example of a three doctor practice.

Agency Response: The Division disagrees. The role of the designated doctor is to provide an unbiased opinion on the topics required by the Labor Code. The disqualifying associations stated in the rules are general situations in which the ability of the designated doctor to provide an unbiased opinion could be reasonably questioned. In the example where three doctors share a medical practice and have a business relationship, if one doctor performed the RME for the employee, it could easily be argued that another doctor in the three doctor practice would have difficulty finding fault in the opinion given by the first doctor and should be treated as a disqualifying association.

In addition, the commenter requests clarifying language that a mere association between a designated doctor and a doctor who has previously examined the employee is not a disqualifying association. As previously stated, disqualifying associations are situations in which the ability of the designated doctor to provide an unbiased opinion could be reasonably questioned. It is not possible to list every situation in which the ability of a designated doctor to provide an unbiased opinion based on a business, social, or family association could be questioned. The language in the rule is broad enough to advise the designated doctor to be alert to situations in which the designated doctor's ability to provide an unbiased opinion could be questioned and to avoid those situations.

Comment: A commenter questions why an employee's treating doctor from a previous work related, or non-work related injury, is not disqualified from acting as a designated doctor and why there is only a 12-month restriction.

Agency Response: Section 126.7(h)(1) specifies that the Division shall select the next available doctor who has not previously treated or examined the employee within the past 12 months and has not examined or treated the employee with regard to a medical condition being evaluated in the designated doctor examination. The 12-month restriction was set to prevent a doctor from examining an employee with whom the doctor has had a recent relationship. Additionally, imposing a longer restriction may have an adverse impact on the pool of eligible designated doctors.

§180.21(a)(2)(F): A commenter disagrees that a designated doctor's employment or contract with the workers' compensation health care network that is providing medical care to the injured employee is a disqualifying association. The commenter feels that the restrictions will limit the number of designated doctors.

Agency Response: The Division disagrees. Insurance Code §1305.101(b) restricts a doctor from performing as a designated doctor for an injured employee receiving medical care through a network with which the doctor contracts or is employed.

§180.21(c): A commenter states the rule is confusing and contradictory. The rule contradicts §180.23(i)(A) regarding a Level 2 Certificate of Registration with no conditions or restrictions. He states the requirement for an active practice in §180.21(c)(2)

conflicts with subsection (c)(5) and suggests alternative language.

Agency Response: The Division disagrees. The Division does not believe the rules are confusing or contradictory. Section 180.23(i) lays out the requirements a doctor must meet to be approved to certify maximum medical improvement (MMI) and assign an impairment rating regardless of conditions or restrictions. Section 180.21(c)(1) places the additional burden on the designated doctor to have no conditions or restrictions on the doctor's status as an approved doctor. There is not a conflict between §180.21(c)(2) and (c)(5) as subsection (c)(2) provides that a doctor must have had an active practice sometime in the doctor's career prior to becoming a designated doctor while subsection (c)(5) provides a current requirement to have an active practice or to take Division approved training for continued participation as a designated doctor.

§180.21(d): Several commenters recommend requiring the designated doctor to have a current and active practice.

Agency Response: The Division declines to make this change. The Division believes this change would unduly restrict the pool of doctors available to be designated doctors.

Comment: A commenter states the rule as written is invalid since it improperly differentiates between medical doctors and doctors of chiropractic, and other doctors as defined in Labor Code §401.011. A commenter states that the Division is incorrectly equating going to chiropractic school and three years of chiropractic practice to attending medical school and completing 4 - 6 years of American Board of Medical Specialties (ABMS) residency. The commenter states the rule conflicts with §408.1225 by allowing some doctors to be exempt from training and suggest alternative language. Another commenter recommends that doctors of osteopathic medicine be included as a designated doctor.

Agency Response: The Division agrees with the commenters and has eliminated exemptions from training. The Division recognizes that there is a difference between attending medical school and chiropractic school; however, both qualify as doctors under the Labor Code. Further, doctors of osteopathic medicine are not precluded from applying to be designated doctors. Doctors of osteopathic medicine meet the definition of doctor under Labor Code §401.011(17).

Comment: A commenter recommends that the number of years of practice after medical, chiropractic or osteopathic school should be the same.

Agency Response: The Division agrees and has made the standard for an active practice uniform for all doctors.

§180.21(d)(3): A commenter recommends specifying that a chiropractor may only be a designated doctor on a claim where the injured employee was treated by a chiropractor. Several commenters recommend clarifying language to specify that a doctor of chiropractic may be a designated doctor on injured employees with injuries to the spine only, rather than the musculoskeletal system, based on the chiropractor's scope of practice.

Agency Response: The Division disagrees. The Division believes chiropractors should be allowed to serve as designated doctors on claims where the injured employee has not received medical care that is outside of the scope of practice for a chiropractor. The Division will not limit injuries to the spine because doctors of chiropractic are able to provide treatment to body parts other than the spine.

Comment: A commenter questions why a designated doctor must have previous experience treating an injured employee in Texas as it does not affect the quality of the doctor's opinions. The commenter notes that out-of-state designated doctors do not have to meet this requirement and contends that Texas doctors should not have the requirement.

Agency Response: The Division agrees. Language requiring previous experience treating injured employees in the Texas workers' compensation system has been removed. However, the Division may still waive the training requirements for out-of-state designated doctors to effectuate an examination by a designated doctor.

§180.21(d)(4)(A): A commenter recommends that fellow status with the American Board of Independent Medical Examiners (ABIME) be added as an alternate qualification to the American Academy of Disability Evaluation Physicians (AADEP). He believes recognizing only AADEP will provide an unfair trade advantage and both organizations perform the same role. Another commenter questions accepting fellowship with AADEP, as the requirements are not in line with that needed for workers' compensation issues, and is fee based rather than training or testing based. He further notes that AADEP is not recognized by the ABMS. Another commenter questions if testing is required to become a fellow of AADEP. Some commenters recommend deleting the AADEP fellow status as a minimal requirement to be a designated doctor. They recommend that all designated doctors should be required to successfully complete Division approved training.

Agency Response: Rather than adding alternative qualifications, the Division has eliminated exemptions from training. Also, Division approved testing will be required.

§180.21(e): A commenter requests clarification regarding the training requirement every two years even if an AADEP fellow. The commenter advises re-training on the same guides every two years is not effective, and recommends training on workers' compensation rules.

Agency Response: The Division refers the commenter to the required training in §180.23(i)(3) which provides that a doctor who has not completed the prescribed training under subsection (i)(2) but who has had similar training in the AMA Guides from an approved vendor within the prior two years may submit the syllabus and training materials from that course to the Division for review. If the Division determines that the training is substantially the same as the prescribed test, the doctor is fully authorized.

Comment: A commenter recommends replacing "biannual" with "biennial."

Agency Response: The Division agrees and has changed the language.

§180.21(j)(2): A commenter recommends changing "15 days" to "15 working days" in regard to the doctor filing a response to a denial of a DDL application.

Agency Response: The Division agrees and has changed the language.

§180.21(m)(9): A commenter recommends clarifying the designated doctor disqualifying association regarding network affiliation to include "to the extent known by the doctor."

Agency Response: The Division disagrees. Insurance Code §1305.101(b) prohibits a network doctor from performing as a designated doctor on an employee that receives care from a net-

work that the designated doctor is employed by or with whom the designated doctor contracts. Additionally, the Division will check network status during the designated doctor scheduling process to avoid these types of scheduling conflicts.

§180.21(m)(12): A commenter recommends leaving "significant" in the rule to prevent the Commissioner from taking an extreme action regarding a minor violation.

Agency Response: The Division disagrees. "Significant" is a determination made on a case-by-case basis and cannot be defined across all situations. The Commissioner of Workers' Compensation has the ability to review the severity/significance of the violation(s) when making a determination and extreme action will not be taken when it is a minor violation.

§180.22(a): A commenter recommends that "reasonable and necessary" should be defined using the American Medical Association (AMA) definition.

Agency Response: The Division disagrees. The Division believes that the rule outlines what is considered reasonable and necessary in subsection (a)(1), (2) and (3).

§180.22(c)(3): Several commenters request that "the injured employee's representative, if any," be added to the list of persons that the treating doctor should communicate with regarding the employee's ability to return to work.

Agency Response: The Division agrees and has added the language. It should be noted that §102.4(b) provides for notification to the injured employee's representative if the health care provider had been notified of the representation. If the doctor has not been notified of the representation, the doctor has no requirement to provide notice to the representative.

§180.22(f)(4): Several commenters recommend removing "or as otherwise directed by the Division" because the requirements for this type of exam is established by statute and the Division does not have the authority to set the exam without a prior designated doctor exam.

Agency Response: The Division agrees and has deleted the language.

Comment: A commenter feels the Division is improperly limiting the use of a carrier's use of an RME. The commenter contends the Division is limited in what type of exam it can order on its own motion, however, the carrier has no restrictions on what type of exam it can request.

Agency Response: The Division disagrees that the carrier is entitled to an RME without restriction. The Division's ability to order an RME, on its own motion or at the request of the carrier, is restricted to only the issue of appropriateness of medical care. There is no statutory provision in Labor Code §408.004(a) to an RME being ordered only on the Division's own motion. Subsection (b) restricts the Division's ability to require an employee to attend an RME until the insurance carrier has first attempted to seek the employee's agreement to attend. The statutory provision the commenter references regarding exams on issues other than appropriateness of medical care is permissive based on the Commissioner of Workers' Compensation adopting rules to allow the additional exams. The Division has determined that the use of additional RME exams as previously allowed by §408.004 is not a tool that has been widely used. Division records indicate that in FY2004, only 151 requests for additional exams were received with 91 being approved. In FY2005, 150 requests were received with 81 being approved. Labor Code §408.004(b) provides that the Commissioner of Workers' Compensation may adopt rules that allow up to three medical examinations in a 180-day period for specific circumstances. The Division is not adopting rules to allow the additional exams. The Division has determined that this provision is not necessary, as the designated doctor process will handle the need for the additional exams.

§180.22(g): Some commenters request clarification as to whether prospective medical necessity review services subsequent to a preauthorization/concurrent review under §134.600 is a health care provider role as defined in this rule. The commenters are concerned that the review requirements may be duplicative of other requirements.

Agency Response: The Division clarifies that §134.600 (Preauthorization, Concurrent Review, and Voluntary Certification of Health Care) does not establish the role of a health care provider reviewing the requests under that rule. The role of a health care provider referenced in subsection (g) could include prospective medical necessity review services and is subject to the requirements of Insurance Code Article 21.58A but is not duplicative of other responsibilities.

§180.22(g): A few commenters state the proposed rule is a reasonable attempt to improve the peer review system.

Agency Response: The Division appreciates the comment.

§180.22(g): A commenter recommends a different definition of peer review such as that used in the Medical Practice Act.

Agency Response: The Division declines to change the definition as suggested because the definition authorizes peer reviews to be performed by all health care providers, not just physicians. If the Division chose to utilize the recommended peer review definition in the Medical Practice Act, which is predominantly for physicians, this would prevent peer reviews from being performed by all health care providers, which is not the intent of the rules.

§180.22(g)(1): A commenter recommends clearly stating which provisions of Insurance Code Article 21.58A, Chapter 1305, and the Labor Code apply to peer review by insurance carriers to avoid potential conflict or overlap. Additionally, a commenter asks if medical necessity determination is made as part of an overall review of a claim, or if the term "peer reviewer" applies to utilization review doctors as defined in §180.20(c)(7).

Agency Response: Section 180.22(g) adds the roles and responsibilities of peer reviewers, a category of health care providers previously undefined. If a utilization review agent is performing utilization review activities, including retrospective review of medical necessity, then the requirements of Insurance Code Article 21.58A and Labor Code §408.023(h) apply. For performance of utilization review activities, the provider must be certified or registered as a utilization review agent (URA) or employed by a URA and licensed to practice in Texas or perform utilization review under a licensed Texas doctor. Peer reviewer activities for any issue other than medical necessity are governed by the Labor Code and these rules and require the provider to hold the appropriate professional license in this state.

§180.22(g)(2): A commenter recommends the phrase "in Texas" be checked against the terminology used in §180.20(c)(7) to clarify whether the phrase includes both holding a Texas medical license and residing in Texas.

Agency Response: The Division verified the terminology used in §180.20(c)(7) and disagrees that it is necessary to change the rule. Neither §180.20 nor §180.22 requires a peer review doctor to reside in Texas; however, a peer review doctor must be licensed in Texas.

§180.22(g)(2) and §180.28(b): A commenter asks if the definition of a peer reviewer means a doctor reviewing a doctor or a physical therapist reviewing a physical therapist, etc. Additionally, a commenter recommends that the "same or similar specialty" language be added to the subsection to indicate that "the peer reviewer hold an appropriate, same or similar professional license in Texas, to conduct the peer review." A commenter states that honest physicians have no problem with another physician reviewing or performing the action of peer review of patient care, regardless of the reviewer's specialty, type of practice, etc. as long as the review is based on the normal standard of care.

Agency Response: The Division declines to stipulate in the rule that a peer reviewer be of the same or similar specialty as the health care provider whose services are being reviewed to maintain consistency with Insurance Code Article 21.58A rules. However, the Division clarifies that health care providers are required to be appropriately trained and qualified to provide the service requested by the provider. A peer reviewer must hold the appropriate Texas license and to perform utilization review must either be licensed in this state or acting under the direction of a Texas licensed doctor. The Division generally agrees with the commenter's statements that the need for peer review is not necessarily for the majority of Texas physicians in the system, and when a peer review is performed it should be based on the normal standard of care. The Division notes that pre-proposal drafts of disability management rules are available on the Division's website at http://www.tdi.state.tx.us/wc/rules/planning/dmtp/tpppd.html. These pre-proposal draft rules pertaining to treatment guidelines and treatment planning are currently being shared with system participants and will be followed by a formal proposal. These rule development activities should further enable the parties to better understand the expected standard of care.

§180.28(a): A commenter suggests that if the desire is to harmonize the network and non-network processes, then the list of elements to be required in a peer review report should be identical to those required by Insurance Code §1305.353(b) for an adverse determination.

Agency Response: The Division declines to make the requested changes because Insurance Code §1305.353(b) specifically applies to networks in determining prospective/utilization review requirements and does not encompass non-network utilization review requirements. The Division instead has chosen to pattern the elements of the peer reviewer's reports after the more accepted terminology used in the Chapters 133 and 134 rules.

§180.28(b): Several commenters recommend allowing insurers to request subsequent peer reviews of dates of service already reviewed for medical necessity as long as the review is to address an issue other than medical necessity (e.g., quality of treatment, patterns of practice, fraud investigation, disability management, etc.). The commenters object to limiting a peer review to one review for the same dates of service as this will unnecessarily hamper the ability of a carrier to use a peer review to address other pertinent issues. A commenter questions if there is a limit to the number of peer reviews a carrier may request during the life of a claim. Some commenters recommend adding language that permits a review if it is for a different service by a different specialty or for situations, such as changes in diagnosis, treatment, or conditions, where a second peer review would be appropriate.

Agency Response: The Division recognizes that there may be instances where an additional peer review is necessary and has changed §180.28(b) to provide for situations where a subsequent peer review would be appropriate which include: 1) review for different service; 2) carrier needs clarification of the peer review opinion; 3) the peer reviewer failed to address the questions submitted by the carrier; and 4) for purposes other than determining the medical necessity of health care. There is not a limit to the number of peer reviews a carrier may request during the life of a claim.

§180.28(b): A commenter expresses concern that peer reviews are not allowed to address future treatment, which limits and restricts doctors from expressing their medical opinions. The commenter contends that this creates an atmosphere of over treatment or unnecessary treatment.

Agency Response: The Division clarifies that the peer review is an administrative review of health care in a workers' compensation claim. A peer review as defined in §180.22(g) permits a prospective review as long as there is a specific request for treatment. A peer review cannot be a review for all future treatment. The Division notes that for a doctor to express a medical opinion, as in the commenter's concern about future care and possible over-treatment, the carrier has the option of requesting a required medical examination, instead of a peer review, to resolve any questions about the appropriateness of the health care.

§180.28(b): A commenter questions whether "peer review" and "peer review report" apply to utilization review determinations if they do not contain compensability or return to work considerations. The commenter believes that the peer review report is in conflict with §134.600. The commenter also questions if a peer review report is provided with a utilization review determination.

Agency Response: It appears that the commenter is asking, "Is a utilization review determination of medical necessity synonymous with a peer review?" Based on this interpretation, the Division clarifies that the terms "peer review" and "peer review report" do apply for items not specifically addressed in §134.600. Treatments and services governed by §134.600 follow that rule's process, including the request for reconsideration. Section 134.600 does not require that the peer review report accompany a denial of a preauthorization request. However, §180.28(b) requires the peer review report be sent to the treating doctor when the carrier uses the report to reduce benefits.

§180.28(c): Several commenters recommend redacting the name and license number of the peer reviewers by the carrier, and listing the peer reviewer's specialty and board certification, if applicable. The commenters suggest the carriers provide the Division a copy of the report with the peer reviewer's name and license, if requested, in the same manner that anonymity is maintained for Independent Review Organizations.

Agency Response: The Division declines to make the requested change. One of the primary purposes of HB 7 modifications to Labor Code §408.0231(g) was to set forth the requirements for the Commissioner to adopt rules regarding: providers performing peer review functions for carriers, peer review standards, imposition of sanctions on doctors performing peer review functions, and other issues related to the quality of peer reviews.

The Division notes that since July 15, 2000 there has been a requirement in the Chapter 133 rules to provide the name and license number of the peer reviewer. The Division continues to support the ability of the subject of a review to know the peer reviewer's identity, which would not be possible if the information is redacted.

§180.28(c): A commenter inquires if the term "health care provider who rendered the health care" is the same as the referral doctor.

Agency Response: Referral doctor is defined in §180.22(e) and it is possible that a referral doctor who examines and treats the employee can be considered the same as the health care provider who rendered the health care.

§180.28(c): Some commenters recommend the carrier submit a copy of the peer review report to the employee and employee's representative.

Agency Response: The Division agrees and has modified §180.28(c) to include this provision.

§180.28(c): A commenter observes that the peer review report would need to be provided to the treating doctor, as well as the health care provider who rendered the health care for each time a peer review report is used. The commenter suggests that the rule proposes an excessive paper flow for the treating doctor to receive if it involves treatment the treating doctor did not directly perform or provide. A commenter asks if the peer review report must be provided with all utilization review determinations.

Agency Response: The Division notes that the treating doctor, as gatekeeper in the workers' compensation system, must receive all pertinent information regarding his patient's (injured employee's) care, regardless of whether the care was performed directly or referred. Section 180.28(c) further provides that the carrier shall submit a copy of a peer review report to the treating doctor and health care provider who rendered the health care when the carrier uses the report to reduce income or medical benefits (which includes a denial) of an employee. Copies of a peer review report are not required for all utilization review determinations but are required any time it results in the carrier taking an action that reduces income or medical benefits (which includes a denial) of an employee.

§180.28(e): Some commenters recommend that this section, or a new rule, is required for an appeal process for a doctor who has received a Division order prohibiting further peer reviews for any reasons set forth in paragraphs (1) through (3) of this subsection.

Agency Response: The Division agrees and has added the appeal mechanisms in §180.27 to the subsection.

§180.28(e)(2): Some commenters are concerned that the review requirements may be excessive and unfair (e.g., requirement to review all records available for the life of a claim vs. applicable documentation to substantiate the review) or duplicative of utilization review agent rules or other documentation requirements for prospective medical necessity review services provided by §134.600.

Agency Response: The Division notes that where pertinent, other Division rules need to be followed. However, to alleviate some of the concerns regarding excessive review of all records available and potential sanctions imposed on a peer review doctor, the rule has been changed to "failure to consider all records provided for review."

§180.28(e)(3): Some commenters recommend requiring the Medical Quality Review Panel to determine medical necessity of health care reviewed, and not a member of the Division staff.

Agency Response: The Division disagrees. The rule parallels Labor Code §408.0231, which establishes the authority for the Commissioner to act on the recommendation of the medical advisor, or another member of the Division's staff. The Commissioner has the prerogative to seek input from the Medical Quality Review Panel, if needed.

§180.28(e)(4): Some commenters recommend deletion of this paragraph, or otherwise change it to limit the application to violations of Division rules and the Labor Code that are related to performing peer reviews.

Agency Response: The Division disagrees. The Commissioner has the authority through Labor Code §408.0231 and other provisions of the Labor Code to delete a doctor from the list, recommend or impose sanctions, and consider anything else relevant.

For, with changes: TIRR Systems; Association of Fire and Casualty Insurers of Texas; Texas Medical Association; American Insurance Association; Medtronic, Inc.; Texas Mutual Insurance Company; Fair Isaac Corporation; The Insurance Council of Texas; Property Casualty Insurers of America; HealthSouth Corporation; Rehab for Workers; Lockheed Martin Aeronautics Company; The Boeing Company; Texas Lobby Solutions; and various individuals.

Neither for or Against: HDM Group.

The amendments to §180.21 and §180.22 and new §180.28 are adopted under the Labor Code §§408.023, 408.0231, 408.004, 408.0041, 408.1225, 408.025, 402.00111, and 402.061. Section 408.023 governs the Division's Approved Doctor List (ADL) and requires the Division to establish criteria for sanctions and removal of doctors from the ADL. Section 408.0231 requires the Commissioner of Workers' Compensation to adopt rules regarding doctors who perform peer review functions for insurance carriers, which may include standards for peer reviews, imposition of sanctions on doctors performing peer reviews, and other issues important to the quality of peer reviews. Section 408.004 provides for required medical examinations to resolve questions about the appropriateness of health care received by injured employees. Section 408.0041 sets out requirements for designated doctors and their examinations and requires the Division to order a medical examination to resolve any question about an injured employee's impairment caused by the compensable injury or the attainment of maximum medical improvement at the request of an insurance carrier or injured employee. Section 408.1225 requires the Commissioner of Workers' Compensation to develop qualification standards and administrative polices regarding eligibility to serve as a designated doctor. Section 408.025 requires the Commissioner to adopt requirements for reports and records filed by health care providers and provides that the treating doctor is responsible for efficient utilization of health care. Section 402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code and other laws of this State. Section 402.061 provides the Commissioner the authority to adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

§180.21. Division Designated Doctor List.

(a) The following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

(1) Active practice--A doctor has an active practice if the doctor maintains routine office hours of at least 20 hours per week for the treatment of patients.

(2) Disqualifying association--Any association that may reasonably be perceived as having potential to influence the conduct or decision of a doctor, which may include:

(A) receipt of income, compensation, or payment of any kind not related to health care provided by the doctor;

(B) shared investment or ownership interest;

(C) contracts or agreements that provide incentives, such as referral fees, payments based on volume or value, and waiver of beneficiary coinsurance and deductible amounts;

(D) contracts or agreements for space or equipment rentals, personnel services, management contracts, referral services, or warranties, or any other services related to the management of the doctor's practice;

(E) personal or family relationships;

(F) a contract with the same workers' compensation health care network that is responsible for the provision of medical benefits to the injured employee; or

(G) any other financial arrangement that would require disclosure under the Labor Code or applicable Division rules, the Insurance Code or applicable Department rules, or any other association with the injured employee, the employer, or insurance carrier that may give the appearance of preventing the designated doctor from rendering an unbiased opinion.

(b) In order to serve as a designated doctor, a doctor must be on the Designated Doctor List (DDL).

(c) To be on the DDL prior to January 1, 2007, the doctor shall at a minimum:

(1) be currently active on the Division's Approved Doctor List (ADL) with a Level 2 Certificate of Registration with no condition(s) or restriction(s) or have a temporary exception to the requirement to be on the ADL as set forth in Labor Code §408.023 and §180.20 of this title (relating to Commission Approved Doctor List);

(2) have had an active practice for one year during their career;

(3) be fully authorized to assign impairment ratings and certify maximum medical improvement (MMI) under §180.23(i) of this title (relating to Commission Required Training for Doctors/Certificate of Registration Levels);

(4) have filed a request in the form and manner prescribed by the Division and have been approved by the Commissioner to be included on the DDL; and

(5) either maintain an active practice or successfully complete Division-approved supplemental training on medical issues relevant to workers' compensation and/or serving as a designated doctor. Supplemental training shall be completed between 18 and 30 months following the doctor's passing the test required to obtain and retain full MMI/impairment authorization.

(d) To be on the DDL on or after January 1, 2007, the doctor shall at a minimum:

(1) meet the registration requirements, or the exceptions thereto, of subsection (c)(1) of this section or, upon expiration or waiver of the ADL in accordance with Labor Code §408.023(k), comply with all successor requirements, including but not limited to financial disclosure under Labor Code §413.041;

(2) have filed an application to be on the DDL, which must be renewed biennially;

(3) have successfully completed Division-approved training and examination on the assignment of impairment ratings using the currently adopted edition of the American Medical Association Guides, medical causation, extent of injury, functional restoration, return to work, and other disability management topics; and

(4) have had an active practice for at least three years during the doctor's career.

(e) A doctor shall renew an application status biennially and shall have completed and submitted to the Division information verifying 12 additional credit hours of training in accordance with subsection (d)(3) of this section with each renewal application.

(f) An incomplete application for registration to be admitted to the DDL pursuant to this section and other applicable rules shall be rejected and shall not be processed.

(g) A complete application shall include:

(1) general contact information including, but not limited to: name, mailing address, telephone and facsimile numbers, and an email address;

(2) the training certificate certifying that the doctor applicant has successfully completed the Division-approved training in accordance with subsection (d)(3) of this section;

(3) Impairment Rating Skills Examination score;

(4) verification of licensure;

(5) information on the doctor's training and experience in various types of health care and injury areas;

(6) disciplinary actions or practice restrictions by an appropriate licensing or certification authority, if any; and

(7) other information required by the Division to confirm the doctor's training and ability to determine:

(A) the extent of the injured employee's compensable injury;

(B) whether the injured employee's disability is the direct result of a work-related injury;

(C) the ability of the injured employee to return to work; or

(D) issues similar to those described in Labor Code §408.0041(a)(1) - (6).

(h) The Commissioner may utilize members of the Medical Quality Review Panel (MQRP) for evaluating DDL applications and making recommendations to the Medical Advisor to approve or deny admission to the DDL. The Commissioner may also utilize members of the MQRP regarding deletion, suspension, or other sanction of a designated doctor as provided in this section.

(i) Doctors shall be denied admission to the DDL:

(1) if the doctor does not meet the requirements of subsection (c)(1) of this section prior to January 1, 2007 or subsection (d)(1) of this section on or after January 1, 2007;

(2) if the doctor has not completed required training in accordance with §180.23(i) of this title and passed the Division approved examination;

(3) for failing to submit a complete application in accordance with this section;

(4) for having a relevant restriction on their practice (including, but not limited to, prior deletion from the ADL or DDL, or a prior ADL restriction); or

(5) for other activities that warrant denial of the application to be on the DDL, such as grounds that would require the Medical Advisor to recommend deletion of a doctor from the ADL or other sanction of a doctor as specified in §180.26 of this title (relating to Doctor and Insurance Carrier Sanctions) or other applicable statutes or rules.

(j) The Division shall notify a doctor of the Commissioner's approval or denial of the doctor's application to be on the DDL.

(1) Denials shall include the reason(s) for the denial.

(2) Within 15 working days after receiving the notice, the doctor may file a response, which addresses the reasons given for the denial.

(A) If a response is not received by the 15th working day after the date the doctor received the notice, the denial shall be final effective the following day. No further notice shall be sent.

(B) If a response which disagrees with the denial is timely received, the Division shall review the response and shall notify the doctor of the Commissioner's final decision. If the final decision is a denial, the Division's final notice shall provide the reason(s) why the doctor's response did not convince the Commissioner to admit the doctor to the DDL. The denial shall be effective the day following the date the doctor receives notice of the denial unless otherwise specified in the notice.

(3) Notwithstanding other provisions of this subsection, for denials pursuant to subsection (i)(1), (2), (3) and (5) of this section, the doctor may within five working days of receipt of notice, file a response which addresses the reason(s) given for the denial.

(A) If a response is not received by the fifth working day after the date the doctor received the notice, the action shall be final effective the following day. No further notice shall be sent.

(B) If a response which disagrees with the action is timely received, the Division shall review the response and shall notify the doctor of the Commissioner's final decision. A final decision denying the doctor admission to the DDL shall provide the reason(s) why the doctor's response did not convince the Commissioner to grant the doctor admission to the DDL. The denial shall be effective the day following the date the doctor receives notice of the denial unless otherwise specified in the notice.

(4) All notices under this subsection shall be delivered by a verifiable means. Date of receipt for notices shall be determined in accordance with §102.5(d) of this title (relating to General Rules for Written Communication to and from the Commission).

(5) The fact that the Commissioner did not take action to deny or restrict admission to the DDL does not waive the Commissioner's right to review or further review a doctor and take action at a later date.

(k) When necessary because the injured employee is temporarily located or is residing out-of-state, the Division may waive any of the requirements as specified in this rule for an out-of-state doctor to serve as a designated doctor to facilitate a timely resolution of the dispute.

(l) Doctors on the DDL shall provide the Division with updated information within 30 days of a change in any of the information provided to the Division on the doctor's DDL application.

(m) In addition to the grounds for deletion or suspension from the ADL or for issuing other sanctions against a doctor under §180.26 of this title, the Commissioner shall delete or suspend a doctor from the DDL, or otherwise sanction a designated doctor for noncompliance with requirements of this section or any of the following:

(1) four refusals within a 90-day period, or four consecutive refusals to perform within the required time frames, a Division requested appointment for which the doctor is qualified;

(2) misrepresentation or omission of pertinent facts in medical evaluation and narrative reports;

(3) having a pattern of practice of unnecessary referrals to other health care providers for the assignment of an impairment rating or determination of MMI;

(4) submission of inaccurate or inappropriate reports as a pattern of practice due to insufficient examination and analysis of medical records;

(5) failure to timely respond as a pattern of practice to a request for clarification from the Division regarding an examination;

(6) assignments of MMI and/or impairment ratings overturned in a contested case hearing, appeals panel decision and/or court decision;

(7) any of the factors listed in subsection (i) of this section that would allow for denial of admission to the DDL;

(8) failure to successfully complete training and testing requirements as specified in subsection (c) or (d) of this section;

(9) failure to notify the Division of any disqualifying association, including conflicts caused by the doctor's and the injured employee's association with the same workers' compensation heath care network, within 48 hours of receiving notice of being selected as a designated doctor as a pattern of practice or conducting an examination when there is a disqualifying association;

(10) failure to maintain an active practice or failure to maintain the alternate training requirements outlined in subsection (c)(5) of this section;

(11) self-referring, including referral to another health care provider with whom the designated doctor has a disqualifying association, for treatment or becoming the employee's treating doctor for the medical condition evaluated by the designated doctor; or

(12) other violation of applicable statutes or rules while serving as a designated doctor.

(n) The process for notification and opportunity for appeal of a sanction is governed by §180.27 of this title (relating to Sanctions Process/Appeals) except that suspension, deletion, or other sanction relating to the DDL shall be in effect during the pendency of any appeal.

(o) The Division shall make available through its website the names of:

(1) doctors on the DDL;

(2) doctors deleted or suspended from the list or otherwise sanctioned by the Commissioner (including a description of the sanction); and

(3) doctors reinstated to the list or whose sanctions were lifted by the Commissioner.

(p) When a doctor is added to the DDL or readmitted following a suspension or deletion, the doctor shall be placed at the bottom of the list for rotation purposes under Labor Code §408.0041.

§180.22. Health Care Provider Roles and Responsibilities.

(a) Health care providers shall provide reasonable and necessary health care that:

(1) cures or relieves the effects naturally resulting from the compensable injury;

(2) promotes recovery; and/or

(3) enhances the ability of the employee to return to or retain employment.

(b) In addition to the general requirements of this section, health care providers shall timely and appropriately comply with all applicable requirements under the statutes and rules, including, but not limited to:

(1) reporting required information;

(2) disclosing financial interests;

(3) impartially evaluating an employee's condition; and

(4) correctly billing for health care provided.

(c) The treating doctor is the doctor primarily responsible for the efficient management of health care and for coordinating the health care for an injured employee's (employee) compensable injury. The treating doctor shall:

(1) except in the case of an emergency, approve or recommend all health care rendered to the employee including, but not limited to, medically reasonable and necessary treatment or evaluation provided through referrals to consulting and referral doctors or other health care providers, as defined in this section;

(2) maintain efficient utilization of health care;

(3) communicate with the employee, employee's representative, if any, employer, and insurance carrier (carrier) about the employee's ability to work or any work restrictions on the employee;

(4) make available, upon request, in the form and manner prescribed by the Division:

(A) work release data;

(B) cost and utilization data;

(C) patient satisfaction data, including comorbidity, "Short Form 12" outcome information (sf 12), and recovery expectations.

(d) The consulting doctor is a doctor who examines an employee or the employee's medical record in response to a request from the treating doctor, the designated doctor, or the Division. The consulting doctor shall:

(1) perform unbiased evaluations of the employee as directed by the requestor including, but not limited to, evaluations of:

(A) the accuracy of the diagnosis and appropriateness of the treatment of the injured employee;

(B) the employee's work status, ability to work, and work restrictions;

(C) the employee's medical condition; and

(D) other similar issues;

(2) submit a narrative report to the treating doctor, the employee, the employee's representative (if any), the carrier, and the Division (if the requestor was the Division);

(3) not make referrals without the approval of the treating doctor and when such approval is obtained, ensure that the provider to whom the consulting doctor is making an approved referral knows the identity and contact information of the treating doctor;

(4) initiate or provide treatment only if the treating doctor approves or recommends the treatment; and

(5) become a referral doctor if the doctor begins to prescribe or provide health care to an employee.

(e) The referral doctor is a doctor who examines and treats an employee in response to a request from the treating doctor. The referral doctor shall:

(1) supplement the treating doctor's care;

(2) report the employee's status to the treating doctor and the carrier at least every 30 days; and

(3) not make referrals without the approval of the treating doctor and when such approval is obtained, ensure that the provider to whom the referral doctor is making an approved referral knows the identity and contact information of the treating doctor.

(f) The Required Medical Examination (RME) doctor is a doctor who examines the employee's medical condition in response to a request from the carrier or the Division pursuant to Labor Code §§408.004, 408.0041, or 408.151. The RME doctor shall:

(1) perform unbiased evaluations of the employee as directed by the RME notice issued by the Division;

(2) not make referrals without the approval of the treating doctor and when such approval is obtained, ensure that the provider to whom the RME doctor is making an approved referral knows the identity and contact information of the treating doctor;

(3) initiate or provide treatment only if the treating doctor approves or recommends the treatment; and

(4) not evaluate, except following an examination by a designated doctor:

(A) the impairment caused by the employee's compensable injury;

(B) the attainment of maximum medical improvement;

(C) the extent of the employee's compensable injury;

(D) whether the employee's disability is a direct result of the work related injury;

(E) the ability of the employee to return to work; or

(F) similar issues.

(g) A peer reviewer is a health care provider who, at the insurance carrier's request, performs an administrative a review of the health care of a workers' compensation claim. The peer reviewer must not have any known conflicts of interest with the injured employee or the health care provider who rendered any health care being reviewed.

(1) A peer reviewer who performs a prospective, concurrent, or retrospective review of the medical necessity or reasonableness of health care services (utilization review) is subject to the requirements of Insurance Code Article 21.58A and Chapter 1305 and applicable provisions of the Labor Code. A peer reviewer who performs utilization review must be:

(A) certified or registered as a utilization review agent (URA) by the Texas Department of Insurance or be employed by or under contract with a certified or registered URA to perform utilization review; and

(B) licensed to practice in Texas or perform utilization reviews under the direction of a doctor licensed to practice in Texas.

(2) A peer reviewer who performs a review for any issue other than medical necessity, such as compensability or an injured employee's ability to return to work, must hold an appropriate professional license in Texas.

(h) The designated doctor is a doctor assigned by the Division to recommend a resolution of a dispute as to the medical condition of an employee. The qualifications and responsibilities of a designated doctor are governed by §180.21 of this title (relating to Division Designated Doctor List) and other rules providing for use of a designated doctor.

(i) A member of the Medical Quality Review Panel (MQRP) is a health care provider chosen by the Division's Medical Advisor under Texas Labor Code §413.0512. All eligibilities, terms, responsibilities, and prohibitions shall be prescribed by contract, and the MQRP members shall serve on the MQRP as prescribed by contract. A provider must meet the performance standards specified in the contract to be eligible for selection by the Medical Advisor to serve on the MQRP. Doctors seeking membership on the MQRP are required to be on the Division's Approved Doctor List.

§180.28. Peer Review Requirements, Reporting, and Sanctions.

(a) A peer reviewer's report shall document the objective medical findings and evidence-based medicine that supports the opinion and include:

(1) the peer reviewer's name and professional license number;

(2) a summary of the reviewer's qualifications;

(3) a list of all medical records and other documents reviewed by the peer reviewer, including dates of those documents;

(4) a summary of the clinical history; and

(5) an analysis and explanation for the peer review recommendation, including the findings and conclusions used to support the recommendations.

(b) The insurance carrier shall not request subsequent peer reviews regarding the medical necessity of health care for dates of services for which a peer review report has already been issued unless:

(1) the review is for a different service requiring review by a different peer review specialty;

(2) the carrier needs clarification of the peer review opinion based on new medical evidence that has not been presented to the peer reviewer;

(3) the peer reviewer failed to fully address the questions submitted by the insurance carrier; or

(4) for purposes other than determining medical necessity of the health care.

(c) The insurance carrier shall submit a copy of a peer review report to the treating doctor and the health care provider who rendered the health care, as well as the injured employee and injured employee's representative, if any, when the insurance carrier uses the report to reduce income or medical benefits of an injured employee.

(d) A peer reviewer and insurance carrier shall maintain accurate records to reflect information regarding requests, reports, and results for peer reviews. The insurance carrier and peer reviewer shall submit such information at the request of the Division in the form and manner proscribed by the Division. The Division will monitor peer review use, activity, and decisions which may result in the initiation of a medical quality review or other Division action.

(e) The Commissioner may impose sanctions on doctors performing peer reviews pursuant to Labor Code §408.0231 and §180.27 of this title (relating to Sanctions Process/Appeals/Restoration/Reinstatement) and other applicable provisions of the Labor Code and Division rules. The Commissioner may prohibit a doctor from conducting peer reviews for any of the following:

(1) non-compliance with the provisions of §180.22 of this title (relating to Health Care Provider Roles and Responsibilities);

(2) failure to consider all records provided for review;

(3) a history of improper or unjustified decisions regarding the medical necessity of health care reviewed; or

(4) any other violation of the Labor Code or Division rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 27, 2006.

TRD-200603957
Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Effective date: January 1, 2007
Proposal publication date: February 3, 2006
For further information, please call: (512) 804-4288

♦ ♦ ♦

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 18. TEXAS GROUNDWATER PROTECTION COMMITTEE

CHAPTER 601. GROUNDWATER CONTAMINATION REPORT

SUBCHAPTER A. GENERAL PROVISIONS RELATING TO PUBLIC FILES AND JOINT REPORT

31 TAC §§601.1 - 601.5

The Texas Groundwater Protection Committee (committee) adopts amendments to §§601.1 - 601.5, concerning General Provisions Relating to Public Files and Joint Report. These sections are adopted without changes to the proposed text in the May 12, 2006, issue of the *Texas Register* (31 TexReg 3841) and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The rules in Chapter 601 define the conditions that constitute groundwater contamination for the purpose of inclusion of cases

in the public files for each state agency having responsibilities related to the protection of groundwater. The rules also describe the contents of the committee's Joint Groundwater Monitoring and Contamination Report required under Texas Water Code (TWC), §26.406. The report describes the current status of groundwater monitoring activities conducted by or required by each agency at regulated facilities or associated with regulated activities; contains a description of each case of groundwater contamination documented during the previous calendar year; contains a description of each case of contamination documented during the previous year for which enforcement action was incomplete at the time of issuance of the preceding report; and indicates the status of enforcement action for each case of contamination which is listed. The rules also specify the form and content of notices of groundwater contamination that must be mailed to each owner of a private drinking water well that may be affected by documented cases of groundwater contamination and to each applicable groundwater conservation district as directed by TWC, §26.408.

The purpose of the adopted amendments is to make grammatical and phrasing changes to conform with guidelines in the *Texas Legislative Council Drafting Manual*, November 2004, for drafting statutes and rules, to make changes in the current names of agencies, to correct legal citations, and to clarify what agencies are subject to the rules.

The committee also is adopting, in concurrent action, the review of Chapter 601 as required by Texas Government Code, §2001.039. The adopted notice of review can be found in the Review of Agency Rules section in this issue of the *Texas Register*.

SECTION BY SECTION DISCUSSION

Administrative and grammatical changes are adopted throughout the sections to bring the existing rule language into agreement with Texas Register requirements and guidance provided in the *Texas Legislative Council Drafting Manual*.

The adopted amendment to §601.1, relating to Purposes of Rules, clarifies that the purposes of the rules apply to the whole Chapter 601 since the addition of Subchapter B, relating to Notice of Groundwater Contamination, in 2003. The two existing purposes and one new purpose are split out as separately numbered paragraphs. In new paragraph (1), the form of a legal citation is corrected, the use of the term "certain state agencies" is clarified by use of the term "Member agency" that will be defined in §601.3(8), the paragraph is ended by a semicolon, and the word "and" is deleted. In new paragraph (2), the archaic demonstrative adjective "such" is replaced with the more proper demonstrative pronoun "that," the paragraph is ended by a semicolon, and conjoined with new paragraph (3) by "and." Adopted new paragraph (3) adds the purpose to specify the form and content of the notice of groundwater contamination required under TWC, §26.408, that was added in 2003 and implemented by adoption of §601.10, relating to Form and Content of Groundwater Contamination Notice, that same year.

The adopted amendment to §601.2, relating to Applicability, splits out the state agencies and organizations having membership on the committee as separately numbered paragraphs. New paragraph (1) deletes reference to the Texas Natural Resource Conservation Commission. New paragraph (2) corrects the name of the Department of State Health Services.

The adopted amendment to §601.3, relating to Definitions, removes ambiguity in the use of the definitions throughout the chapter. The adopted amendment to §601.3(1) corrects the legal citation of House Bill 1458 and extends the definition to include amendments to the TWC in 2003. The adopted amendment to §601.3(2) deletes reference to the Texas Natural Resource Conservation Commission. The adopted amendment to §601.3(4) clarifies that documentation of groundwater contamination is made by one of the committee's member agencies, as newly defined, and clarifies that the information pertinent to making a determination of groundwater contamination is maintained by the same agency making the determination. The adopted amendment to §601.3(5) clarifies that an enforcement action is made by one of the committee's member agencies and is restricted to action that accomplishes or requires the identification, documentation, monitoring, assessing, or remediation of groundwater contamination. The adopted amendment to §601.3(7) moves the exception for an aquifer exemption to the beginning of the second sentence rather than the middle of that sentence and corrects the two legal citations in that exception, conforms to the guidelines in the *Texas Legislative Council Drafting Manual* to draft rules in the present tense rather than the future tense, restricts the aquifer exemption to those conditions in subparagraphs (A) or (B), clarifies that the quantity specified in the condition in subparagraph (B) refers to dissolved solids, and restricts the hydrological connection in clause (ii) of subparagraph (B) to a surface water body or another zone of groundwater that has a concentration less than or equal to the specified level.

Adopted new §601.3(8) defines "Member agency" as one of the ten entities constituting the committee specified by TWC, §26.403 and §601.2, whether those entities consider themselves or in fact are legally separate agencies of the state. The new definition also specifies that not all member agencies have legal responsibilities related to the protection of groundwater, and specifies that those which do have responsibilities are those listed in TWC, §26.406(b).

The adopted amendment to §601.4, relating to Public Files, corrects the two legal citations and restricts the application of that rule to member agencies having responsibilities related to the protection of groundwater as newly defined in §601.3(8).

The adopted amendment to §601.5, relating to Joint Groundwater Monitoring and Contamination Report, specifies that the report describe the current status of groundwater monitoring programs conducted by or required by each member agency as newly defined in §601.3(8).

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The committee reviewed the rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in §2001.0225(g)(3). The adopted rulemaking only makes grammatical and phrasing changes to conform with guidelines in the *Texas Legislative Council Drafting Manual* for drafting statutes and rules, to make changes in the current names of agencies, to correct legal citations, and to clarify what agencies are subject to the rules. These amendments are not expected to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Furthermore, even if the adopted rules did meet the definition of a "major environ-

mental rule," the adopted rules are not subject to §2001.0225 because they do not accomplish any of the four results specified in §2001.0225(a).

First, the adoption does not exceed a standard set by federal law because there is no equivalent federal statute for the reporting of groundwater contamination or for maintaining public files containing documented cases of groundwater contamination.

Second, this adoption does not exceed an express requirement of state law. The committee is specifically authorized under TWC, §26.406(d) to adopt rules defining the conditions that constitute groundwater contamination for purposes of inclusion of cases in the public files and the joint report. Also, the adopted changes only make grammatical and phrasing changes to conform with guidelines in the *Texas Legislative Council Drafting Manual* for drafting statutes and rules, to make changes in the current names of agencies, to correct legal citations, and to clarify what agencies are subject to the rules.

Third, this adoption does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program because this adoption only makes grammatical and phrasing changes to conform with guidelines in the *Texas Legislative Council Drafting Manual* for drafting statutes and rules, to make changes in the current names of agencies, to correct legal citations, and to clarify what agencies are subject to the rules. Finally, this adoption does not adopt a rule solely under the general powers of the committee instead of under a specific state law. The amendments are specifically adopted under TWC, §26.406(d).

No comments were received on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The committee prepared a takings impact assessment for the rules in accordance with Texas Government Code, §2007.043. The purpose of this rulemaking is to make grammatical and phrasing changes to conform with guidelines in the *Texas Legislative Council Drafting Manual* for drafting statutes and rules, to make changes in the current names of agencies, to correct legal citations, and to clarify what agencies are subject to the rules.

These rules provide for a listing of the duties and responsibilities assigned to the committee under TWC, §26.406, concerning the maintenance by certain state agencies of public files containing documented cases of groundwater contamination and the publication by the committee, in conjunction with the Texas Commission on Environmental Quality (TCEQ), of annual groundwater monitoring and contamination reports and establish general policies of the committee to guide such implementation.

Because the rule governs the actions of the member agencies and organizations on the committee, it does not affect private real property and does not, in whole or in part, or temporarily or permanently, restrict or limit a property owner's right to the property that would otherwise exist in the absence of the rules.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The adopted committee rulemaking does not authorize actions contained in the Coastal Coordination Act Implementation Rules in 31 TAC §505.11(a)(6) or (b)(2) or the Natural Resources Code (NRC), Chapter 33. The NRC, §33.205(a), states that "An agency or subdivision that takes an agency or subdivision action described by §33.2051 or §33.2053 that may adversely affect a coastal natural resource area shall comply with the goals and policies of the coastal management program."

31 TAC §505.11(a)(6) and (b)(2), which corresponds directly with NRC, §33.2051 and §33.2053, describes agency rulemaking actions that require certain agencies to comply with NRC, §33.205(a) and (b), when adopting or amending a rule governing certain activities. However, these provisions do not list the committee as an agency subject to the provisions of NRC, §33.205(a) and (b), or that must demonstrate compliance with the goals and policies of the Coastal Management Program (CMP). The committee is described as "an interagency committee" in TWC, §26.403, with the power to adopt rules under TWC, §26.406(d). TWC, §26.403(b), designates the TCEQ as the lead agency for the committee, and provides that the TCEQ shall administer the activities of the committee; however, the committee is given separate statutory power to adopt rules under TWC, §26.406(d) and §26.408(c). Therefore, cited provisions of the TAC and the NRC do not apply to the committee's adoption of rules.

Nonetheless, should the rulemaking actions of the committee be interpreted for any reason as the TCEQ's adoption of rules, none of the adopted rules fall under the actions described in 31 TAC §505.11(a)(6) and (b)(2) or NRC, §33.2051 or §33.2053. Therefore, the requirements of the CMP do not apply to this rulemaking.

PUBLIC COMMENT

The proposed rules were published for comment in the May 12, 2006, issue of the *Texas Register* (31 TexReg 3841). No public hearing was held. The comment period closed June 12, 2006. No comments were received.

STATUTORY AUTHORITY

The amendments are adopted under TWC, §26.406, which provides the committee with rulemaking authority.

The adopted amendments implement TWC, §§26.401 - 26.408.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 27, 2006.

TRD-200603949
Robert Martinez
Director, Environmental Law Division, TCEQ
Texas Groundwater Protection Committee
Effective date: August 16, 2006
Proposal publication date: May 12, 2006
For further information, please call: (512) 239-0348

♦ ♦ ♦

REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Agency Rule Review Plan

Texas Groundwater Protection Committee

Title 31, Part 18

TRD-200603951
Filed: July 27, 2006

♦ ♦ ♦

Proposed Rule Reviews

Texas State Soil and Water Conservation Board

Title 31, Part 17

The Texas State Soil and Water Conservation Board files this notice of intent to review Title 31, Part 17, Chapter 518, Subchapter A, §518.1 and §518.2, Employee Training Rules, of the Texas Administrative Code in accordance with the Texas Government Code, §2001.039. The agency finds that the reason for adopting the rules continues to exist.

As required by §2001.039 of the Texas Government Code, the agency will accept comments and make a final assessment regarding whether the reason for adopting the rules continues to exist. The comment period will last 30 days beginning with the publication of this notice of intent to review.

Comments or questions regarding this rule review may be submitted to Rex Isom, Executive Director, Texas State Soil and Water Conservation Board, P.O. Box 658, Temple, Texas 76503, by e-mail to risom@tsswcb.state.tx.us, or by facsimile at (254) 773-3311.

TRD-200603974
Mel Davis
Special Projects Coordinator
Texas State Soil and Water Conservation Board
Filed: July 28, 2006

♦ ♦ ♦

The Texas State Soil and Water Conservation Board files this notice of intent to review Title 31, Part 17, Chapter 523, §§523.1 - 523.8, Agricultural and Silvicultural Water Quality Management, of the Texas Administrative Code in accordance with the Texas Government Code, §2001.039. The agency finds that the reason for adopting the rules continues to exist.

As required by §2001.039 of the Texas Government Code, the agency will accept comments and make a final assessment regarding whether the reason for adopting the rules continues to exist. The comment period will last 30 days beginning with the publication of this notice of intent to review.

Comments or questions regarding this rule review may be submitted to Rex Isom, Executive Director, Texas State Soil and Water Conservation Board, P.O. Box 658, Temple, Texas 76503, by e-mail to risom@tsswcb.state.tx.us, or by facsimile at (254) 773-3311.

TRD-200603975
Mel Davis
Special Projects Coordinator
Texas State Soil and Water Conservation Board
Filed: July 28, 2006

♦ ♦ ♦

The Texas State Soil and Water Conservation Board files this notice of intent to review Title 31, Part 17, Chapter 525, Subchapter A, §§525.1 - 525.9, Audit Requirements for Soil and Water Conservation Districts, of the Texas Administrative Code in accordance with the Texas Government Code, §2001.039. The agency finds that the reason for adopting the rules continues to exist.

As required by §2001.039 of the Texas Government Code, the agency will accept comments and make a final assessment regarding whether the reason for adopting the rules continues to exist. The comment period will last 30 days beginning with the publication of this notice of intent to review.

Comments or questions regarding this rule review may be submitted to Rex Isom, Executive Director, Texas State Soil and Water Conservation Board, P.O. Box 658, Temple, Texas 76503, by e-mail to risom@tsswcb.state.tx.us, or by facsimile at (254) 773-3311.

TRD-200603976
Mel Davis
Special Projects Coordinator
Texas State Soil and Water Conservation Board
Filed: July 28, 2006

♦ ♦ ♦

Adopted Rule Review

Texas Groundwater Protection Committee

Title 31, Part 18

The Texas Groundwater Protection Committee (TGPC or committee) files this notice of review and readoption of Chapter 601, Groundwater Contamination Report, with amendments as concurrently published in the Adopted Rules section of this issue of the *Texas Register*.

This review of Chapter 601 is adopted in accordance with the requirements of Texas Government Code, §2001.039, which requires state agencies to review and consider for readoption each of their rules ev-

ery four years. The review must include an assessment of whether the reasons for the rules continue to exist.

CHAPTER SUMMARY

The TGPC was created by the 71st Legislature in 1989 to bridge gaps between existing state groundwater programs and to optimize water quality protection by improving coordination among agencies involved in groundwater activities. The committee's rules in Chapter 601 define the conditions that constitute groundwater contamination for the purpose of inclusion of cases in the public files for each state agency having responsibilities related to the protection of groundwater. These rules also describe the contents of the committee's Joint Groundwater Monitoring and Contamination Report required under Texas Water Code (TWC), §26.406. The report describes the current status of groundwater monitoring activities conducted by or required by each agency at regulated facilities or associated with regulated activities; contains a description of each case of groundwater contamination documented during the previous calendar year; contains a description of each case of contamination documented during the previous year for which enforcement action was incomplete at the time of issuance of the preceding report; and indicates the status of enforcement action for each case of contamination which is listed. The rules also specify the form and content of notices of groundwater contamination that must be mailed to each owner of a private drinking water well that may be affected by documented cases of groundwater contamination and to each applicable groundwater conservation district as directed by TWC, §26.408.

FINAL ASSESSMENT OF WHETHER THE REASONS FOR THE RULES CONTINUE TO EXIST

The committee conducted a review and determined that the reasons for the rules in Chapter 601 continue to exist. Chapter 601 is necessary because TWC, §26.406 specifically provides that the committee shall adopt rules defining the conditions that constitute groundwater contamination for purposes of inclusion of cases in the public files and the joint report required by this section; and TWC, §26.408 specifically directs the committee to designate the form and content of the notice of groundwater contamination mailed to owners of private drinking water wells and to groundwater conservation districts. To meet these statutory requirements, the rules provide the definitions and applicability for maintaining public files on groundwater contamination cases and contents of the annual Joint Groundwater Monitoring and Contamination Report required by TWC, §26.406(d) and the form and content of the mailed notice required by TWC, §26.408(c).

PUBLIC COMMENT

The proposed review of Chapter 601 was published for comment in the May 12, 2006, issue of the *Texas Register* (31 TexReg 3919). The comment period closed June 12, 2006. No comments were received.

TRD-200603950
Robert Martinez
Director, Environmental Law Division, TCEQ
Texas Groundwater Protection Committee
Filed: July 27, 2006

TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 19 TAC §21.731(a)(1)(B)

Chart II
Core Residency Questions

Texas Higher Education Coordinating Board §21.731 requires each student applying to enroll at an institution to respond to a set of core residency questions for the purpose of determining the student's eligibility for classification as a resident.

PART A. Student Basic Information. <u>All Students must complete this section.</u>

Name: _____ Student ID Number: _____

Date of Birth: _____

PART B. Previous Enrollment. <u>For all students.</u>

1. During the 12 months prior to the term for which you are applying, did you attend a public college or university in Texas in a fall or spring term?
Yes ___ No ___

If you answered **"no",** please continue to **Part C.**
If you answered "yes", complete questions 2 - 5:

2. What Texas public institution did you last attend? (Give full name, not just initials.)
_____

3. In which terms were you last enrolled? (check all that apply)
___ fall, 200__ ___ spring, 200__

4. During your last semester at a Texas public institution, did you pay resident (in-state) or nonresident (out-of-state)?
___ resident (in-state) ___ nonresident (out-of-state) ___ unknown

5. If you paid in-state tuition at your last institution, was it because you were classified as a resident or because you were a nonresident who received a waiver?
___ resident ___ nonresident with a waiver ___ unknown

IMPORTANT: If you were enrolled at a Texas public institution during a fall or spring semester within the previous 12 months and were classified as a Texas resident, skip to Part I, sign and date this form and submit it to your institution. If you were not enrolled, or if you were enrolled but classified as a nonresident, proceed to Part C.

PART C. Residency Claim.

Are you a resident of Texas? Yes ___ No ___
If you answered <u>yes</u>, continue to **Part D.**
If you answered <u>no</u>, complete the following question and continue to **Part I.**
Of what state or country are you a resident? _____
If you are uncertain, continue to **Part D.**

PART D. Acquisition of High School Diploma or GED.

	Yes	No
1. a. Did you graduate from high school or complete a GED in TX?		
1. b. If you graduated from high school, what was the name and city of the school?		
2. Did you live in TX the 36 months leading up to high school graduation or completion of the GED?		
3. When you begin the semester for which you are applying, will you have lived in TX for the previous 12 months?		
4. Are you a U.S. Citizen or Permanent Resident?		

Instructions to Part D.:

- If you answered "no" to question 1a or 2 or 3, continue to **Part E.**
- If you answered "yes" to all four questions, skip to **Part I.**
- If you answered "yes" to questions 1, 2 and 3, but "no" to question 4, complete a copy of the **Affidavit** in Chart III, provided as an Attachment to this form, skip to **Part I** of this form, and submit both this form and the affidavit to your institution.

PART E. Basis of Claim to Residency. TO BE COMPLETED BY EVERYONE WHO DID NOT ANSWER "YES" TO QUESTIONS 1a, 2, AND 3 OF PART D.

1. Do you file your own federal income tax as an independent tax payer? Yes ___ No ___

2. Are you claimed as a dependent or are you eligible to be claimed as a dependent by a parent or court-appointed legal guardian? Yes___ No ___ (To be eligible to be claimed as a dependent, your parent or legal guardian must provide at least one half of your support. A step-parent does not qualify as a parent if he/she has not adopted the student.)

3. If you answered "No" to both questions above, who provides the majority of your support?
Self___ parent or guardian___ other: (list)_____

Instructions to Part E.

- If you answered "yes" to question 1, continue to **Part F.**
- If you answered "yes" to question 2, skip to **Part G.**
- If you answered "no" to 1 and 2 and "self" to question 3, continue to **Part F.**
- If you answered "no" to 1 and 2 and "parent or guardian" to question 3, skip to **Part G.**
- If you answered "no" to 1 and 2 and "other" to question 3, skip to **Part H** and provide an explanation, and complete Part I.

PART F. Questions for students who answered "Yes" to Question 1 or "Self" to Question 3 of PART E.

	Yes	No	Years	Mo.	Visa/Status
1. Are you a U.S. Citizen?					
2. Are you a Permanent Resident of the U.S.?					
3. Are you a foreign national whose application for Permanent Resident Status has been preliminarily reviewed? (You should have received a fee/filing receipt or Notice of Action					

(I-797) from USCIS showing your I-485 has been reviewed and has not been rejected).					
4. Are you a foreign national here with a visa or are you a Refugee, Asylee, Parolee or here under Temporary Protective Status? If so, indicate which.					
5. Do you currently live in Texas? If you are out of state due to a temporary assignment by your employer or other temporary purpose, please explain in Part H.	Yes	No			
6. a. If you currently live in Texas, how long have you been living here?			Months	Years	
b. What is your main purpose for being in the state? If for reasons other than those listed, give an explanation in Section H.	Go to College [ ]		Establish/maintain a home [ ]		Work Assignment [ ]
7. If you are a member of the U.S. military, is Texas your Home of Record?	Yes	No			
What state is listed as your military legal residence for tax purposes on your Leave and Earnings Statement?	State				

	Yes	No
8. Do any of the following apply to you? (Check all that apply)		
a. Hold the title to real property (home, land) in Texas? If yes, date acquired: _____		
b. Own a business in Texas? If yes, date acquired: _____		
c. Hold a state or local license to conduct a business or practice a profession in TX? If yes, date acquired: _____		
9. For the past 12 months, have you: (Check all that apply)		
a. been gainfully employed in TX?		
b. received services from a social service agency that provides services to homeless persons?		
10. a. Are you married to a person who could answer "yes" to any part of question 8 or 9?		
b. If yes, indicate which question could be answered yes by your spouse:	Question:	
c. How long have you been married to the Texas resident?	Months	Years

Skip **Part G** and Continue to **Part H**.

PART G. Questions for students who answered "Parent" or "Legal Guardian" to Question 3 of PART E.

	Yes	No	Years	Mo.	Visa/Status
1. Is the parent or legal guardian upon whom you base your claim of residency a U.S. citizen?					
2. Is the parent or legal guardian upon whom you base your claim of residency a Permanent Resident?					
3. Is this parent or legal guardian a foreign national whose application for Permanent Resident Status has been preliminarily reviewed? (He or she should have received a fee/filing receipt or Notice of Action (I-797) from the USCIS showing his or her I-485 has been reviewed and has not been rejected)					
4. Is this parent or legal guardian a foreign national here with a visa or a Refugee, Asylee, Parolee or here under Temporary Protective Status? If so, indicate which.					
5. Does this parent or legal guardian currently live in Texas? If he or she is out of state due to a temporary assignment by his/her employer or other temporary purpose, please explain in Part H.					
6. a. If he or she is currently living in Texas, how long has he or she been living here?			Months	Years	
b. What is your parent's or legal guardian's main purpose for being in the state? If for reasons other than those listed, give an explanation in Section H.	Go to College [ ]		Establish/maintain a home [ ]		Work Assignment [ ]
7. If he or she is a member of the U.S. military, is Texas his or her Home of Record?					
What state is listed as his or her military legal residence for tax purposes on his or her Leave and Earnings Statement?	State				

	Yes	No
8. Do any of the following apply to your parent or guardian? (Check all that apply)		
a. Hold the title to real property (home, land) in Texas?		
If yes, date acquired: _____		
b. Own a business in Texas?		
If yes, date acquired: _____		

c. Hold a state or local license to conduct a business or practice a profession in TX? If yes, date acquired: _____		
9. For the past 12 months, has your parent or guardian: (Check all that apply) a. been gainfully employed in TX?		
b. received services from a social service agency that provides services to homeless persons?		
10. a. Is your parent or legal guardian married to a person who could answer "yes" to any part of question 8 or 9?		
b. If yes, indicate which question could be answered yes by your parent or guardian's spouse:	Question:	
c. How long has your parent or guardian been married to the Texas resident?	Months	Years

Part H. General Comments. Is there any additional information that you believe your college should know in evaluating your eligibility to be classified as a resident? If so, please provide it below:

PART I. Certification of Residency. All students must complete this section.

I understand that officials of my college/university will use the information submitted on this form to determine my status for residency eligibility. I authorize the college/ university to verify the information I have provided. I agree to notify the proper officials of the institution of any changes in the information provided. I certify that the information on this application is complete and correct and I understand that the submission of false information is grounds for rejection of my application, withdrawal of any offer of acceptance, cancellation of enrollment and/or appropriate disciplinary action.

Signature: _____ Date: _____

Figure: 43 TAC §18.16(a)

Type of Vehicle	Minimum Insurance Level
1. Tow trucks and household goods carriers (gross vehicle weight less than 26,000 lbs.).	$300,000
2. Buses designed or used to transport more than 15 passengers (including the driver), but fewer than 26 passengers (not including the driver).	$500,000
3. Commercial motor vehicles which are buses with a seating capacity of 15 passengers or fewer (including the driver) operated by a foreign motor carrier and foreign motor private carrier as defined in 49 USC §13102.	$1,500,000
4. Buses designed or used to transport 26 passengers or more (not including the driver).	$5,000,000
5. Commercial school buses, regardless of the passenger capacity as described in Transportation Code, §643.1015.	$500,000
6. Commercial motor vehicles that are buses with a seating capacity of 16 passengers or more (including the driver) operated by a foreign motor carrier or foreign motor private carrier as defined in 49 USC §13102.	$5,000,000
7. Farm trucks (gross vehicle weight 48,000 lbs. or more).	$500,000
8. Commercial motor vehicles (gross vehicle weight in excess of 26,000 lbs.), including tow trucks.	$500,000
9. Commercial motor vehicles, as defined in 49 CFR §390.5, operated by a foreign motor carrier or foreign motor private carrier as defined in 49 USC §13102.	$750,000
10. Commercial motor vehicles - Oil listed in 49 CFR §172.101; hazardous waste, hazardous materials and hazardous substances defined in 49 CFR §171.8 and listed in 49 CFR §172.101, but not mentioned in item 10 of this table.	$1,000,000
11. Commercial motor vehicles - Hazardous substances, as defined in 49 CFR §171.8, transported in cargo tanks, portable tanks, or hopper-type vehicles with capacities in excess of 3,500 water gallons; or any quantity of Division 1.1, 1.2, and 1.3 materials, any quantity of Division 2.3, Hazard Zone A material; in bulk Division 2.1 or 2.2; or highway route controlled quantities of a Class 7 material, as defined in 49 CFR §173.403.	$5,000,000

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Department of Aging and Disability Services

Public Hearing

The Department of Aging and Disability Services (DADS) will conduct a public hearing to receive comments on the Long-Term Care Plan for Persons with Mental Retardation and Related Conditions. The public hearing will be held on August 21, 2006, at 10:00 a.m. in the Public Hearing Room at DADS, Winters Building, 701 W. 51st Street, Austin, Texas.

In addition, comments may be submitted during the public comment period, which begins August 11, 2006, and ends August 21, 2006. Comments must be submitted in writing to the Department of Aging and Disability Services, Jill Schalchlin, Mail Code W-578, P.O. Box 149030, Austin, Texas 78714-9030. Comments may also be submitted electronically to jill.schalchlin@dads.state.tx.us. For additional information or a copy of the Long-Term Care Plan, contact Jill Schalchlin at (512) 438-4550.

TRD-200604007
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Filed: August 2, 2006

♦ ♦ ♦

Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of July 21, 2006, through July 27, 2006. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on August 2, 2006. The public comment period for these projects will close at 5:00 p.m. on September 1, 2006.

FEDERAL AGENCY ACTIONS:

Applicant: Texas Department of Transportation; Location: The project is located in the Brazos River and adjacent wetlands along a 2.3-mile project length. The project can be located on the U.S.G.S. quadrangle map entitled: Brazoria, Texas. Approximate UTM Coordinates in NAD 27 (meters) for the west project terminus: Zone 15; Easting: 249730; Northing: 3215930. Approximate UTM Coordinates in NAD 27 (meters) for the east project terminus: Zone 15; Easting: 252595; Northing: 3216794. Project Description: The applicant proposes to widen State Highway (SH) 332 from a two-lane undivided road to a four-lane divided roadway between SH 36 to 0.87 miles east of Farm-to-Market (FM) 521. New right-of-way (ROW) will be required for portions of the project area. The new roadway will cross the Brazos River between the existing bridge and Union Pacific RR bridge and will require temporary access to portions of the river channel. Approximately 2.85 acres of wetlands and other waters will be permanently filled and 2.39 acres of wetlands will be temporarily impacted with a conversion of 1.35 acres of forested wetlands and emergent wetlands. The applicant proposes to offset project impacts through the set-aside of 18.73 acre-credits at the Coastal Bottomlands Mitigation Bank. CCC Project No.: 06-0261-F1; Type of Application: U.S.A.C.E. permit application #24062 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act.

Applicant: Calhoun LNG, LP; Location: The project site is located in Lavaca Bay, at the Port of Port Lavaca-Point Comfort, in Port Lavaca, Calhoun County, Texas. An associated 27-mile-long send-out pipeline will originate at the proposed terminal facility in Calhoun County, and will terminate near the town of Edna, in Jackson County, Texas. Two smaller pipeline laterals (0.25 mile each) will be located in the immediate vicinity of the terminal facility. The terminal facility site can be located on the U.S.G.S. quadrangle map entitled: Point Comfort, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 738879; Northing: 3170467. The terminus of the proposed pipeline can be located on the U.S.G.S. quadrangle map entitled: Edna, Texas. Approximate UTM Coordinated in NAD 27 (meters): Zone 14; Easting: 722666; Northing: 3204354. Project Description: The applicant proposes to construct, operate, and maintain structures and equipment necessary for a liquefied natural gas (LNG) receiving and transportation facility. The project is designed for the importation, storage, and vaporization of about 1.0 billion cubic feet per day (Bcf/d) of foreign-source LNG to provide a competitive supply of natural gas to local industrial customers and to deliver natural gas into the existing interstate and intrastate natural gas pipelines near Edna, Texas. The terminal facility will be located along the southeastern shoreline of Lavaca Bay, south of Point Comfort, Texas. Large LNG ships (generally greater than 1,000 feet in length) will off-load LNG at a new marine terminal to be constructed by deepening an existing dredged harbor owned and operated by the Calhoun County Navigation District. The terminal will have the capability of unloading up to 120 ships per year. LNG will be transported by vacuum-jacketed, cryogenic service pipes to cryogenic service storage tanks where it will be stored in a liquefied state at atmospheric pressure. To condition the LNG for the intrastate pipeline market, the LNG will be pressurized by pumps and vaporized in heat exchangers to pipeline quality natural gas. No additional compression will be required above the exchanger output pressures for gas transport. Natural gas will be sent out of the terminal facilities at a rate of up to 1.0 Bcf/d via a 27-mile long, 36-inch-diameter natural gas send out pipeline. The send out pipeline will transport the natural gas to the meter station located near Edna, Texas. In addition, a 0.25-mile-long, 8-inch-diameter lateral leading from the facility to the Formosa Company and a 0.25-mile, 16-inch-diameter lateral leading from the facil-

ity to an existing Transco meter station are also proposed. The facility will be constructed on 73 acres of an 89-acre, man-made, industrial use site owned by the Port of Port Lavaca-Point Comfort. The construction of two LNG tanks, vaporization and vapor handling system, and support buildings and piping structures will not result in impacts to jurisdictional areas. However, in order to accommodate LNG ships, the existing harbor and turning basin would need to be dredged to a depth of 36 feet mean sea level (MSL). A turning basin adjacent to the harbor is also proposed. A total of 4.2 million cubic yards of material would be dredged from this 79-acre area. Of this material, approximately 3.2 million cubic yards of material would be removed to construct the new turning basin and 0.7 million cubic yards of material would be removed for the ship berth. The applicant has developed a dredged material management plan that proposes open-water disposal of a majority of the dredged material. Dredged material would be used to "cap" contaminated sediments in the surrounding area. The marine terminal will also include the construction of reinforced concrete breasting and mooring dolphins, which will be required to safely berth and moor the full range of ships potentially using the slip area. The LNG unloading dock will be a two-level reinforced concrete beam and slab structure approximately 50 feet wide by 150 feet long supported on piles. The LNG dock will be accessed from the main terminal by a trestle. The dock will be curbed and its surface will be sloped to a collection point to confine LNG spillage. Construction of the docking and unloading facilities will occur in a previously disturbed area. Construction of the proposed pipelines and related facilities would disturb about 416.6 acres of land, including the construction right-of-way (ROW) for the 36-inch diameter main pipeline and 8- and 16-inch diameter laterals, additional temporary workspaces, a contractor pipe yard, main line valve delivery points/interconnects, pig launcher and receiver, and access roads. Approximately 25.2 miles of the route for the 36-inch diameter pipeline would be immediately adjacent to existing ROW while the 8-inch lateral would be adjacent to existing ROW for 0.2 mile. The 16-inch diameter lateral will be adjacent to an existing ROW for its entire length. Construction of the 27-mile-long, 36-inch diameter pipeline would result in impacts to 23 acres of wetlands. Of this acreage, 2.29 acres of forested wetlands would be permanently impacted as a result of trenching the pipeline. The remaining impacts are considered temporary and the areas will be restored and monitored upon completion of construction activities. The applicant proposes to directionally drill the pipeline beneath all navigable water bodies located along the pipeline route. The applicant is currently evaluating appropriate mitigation for impacts to forested wetlands located along the pipeline ROW. The applicant is proposing to dredge the Point Comfort Turning Basin to a depth of 36 feet mean low lower water (MLLW) with a 2-foot advanced maintenance requirement and a 2-foot overdepth allowance. Therefore, the assumed depth of the dredge site is -40 feet MLLW. This will involve the excavation of approximately 3.5 million cubic yards of material. The estimated annual maintenance dredging volume is 300,000 cubic yards of material. The total maintenance dredge volume for the 50-year life of the project would be 15 million cubic yards of material. An unnamed oyster reef may occur within the parameters of the dredge area and may be impacted as a result of dredging operations. The applicant is proposing to dispose of the dredge material using the following methodologies: Enhanced Recovery Projects, Dredge Island Marsh, Dredge Island Expansion South, Dredge Island Expansion North, Central, Cox Bay and Shoreline Protection, Alcoa Bauxite Impoundments, Alcoa Process Water Ponds, and Upland Confined Placement Areas. Enhanced Recovery Projects - This disposal methodology involves the discharge of dredge material in the open waters of Lavaca Bay southwest of Dredge Island. Four discrete areas of high mercury concentrations have been identified. The DMMP proposes to cap these areas. The caps will be approximately 2 feet thick and will cover up to 450 acres of unvegetated, shallow water habitat within Lavaca Bay. Berms will be constructed around the perimeter of the capped areas to contain the material. This placement method will utilize 1,430,000 cubic yards of dredge material. The capped areas will remain shallow water habitat (-3 feet MLLW) following dredge material placement. Some oyster reefs may be located within 500 feet of the Enhanced Recovery Projects. However, impacts to the reefs will be minimized through the implementation of control measures (i.e. containment berms). Dredge Island Marsh - The applicant proposes to utilize up to 1,800,000 cubic yards of maintenance material and 650,000 cubic yards of very stiff to hard material to accelerate the natural accretion of Dredge Island. This material will be contained within submerged earthen berms. The area will be constructed to an elevation conducive to the establishment of marsh creation. The Dredge Island Marsh will replace 280 acres of shallow, unvegetated bay bottom habitat with 260 acres of coastal marsh and 60 acres of uplands. One oyster reef was identified within 500 feet of this area. The reef will not be directly affected by the placement of dredge material at Dredge Island. Dredge Island Expansion North and South - The applicant is proposing to expand the northern and southern perimeters of Dredge Island. These areas contain high concentrations of mercury. This disposal method will involve the use of up to 3,770,000 cubic yards of dredge material and would ultimately result in the conversion of 55 acres of open bay to uplands. No oyster reefs were identified within 500 feet of the area. Central Cox Bay and Shoreline Protection - The applicant is proposing to utilize new and maintenance dredge material to create 341 acres of marsh habitat. An additional 94 acres of upland habitat would also be created. The proposed marsh would extend from the outfall of the Joslin Power Plant to the edge where Cox Bay meets Huisache Cove. This effort is intended to restore the historic shoreline of Cox Bay. Approximately 2,420,000 cubic yards of maintenance material, 1,260,000 cubic yards of soft clay, and 1,440,000 cubic yards of hard to very stiff clay material will be used to restore the shoreline and create marsh habitat. Alcoa Bauxite Impoundments and Alcoa Process Water Ponds - The applicant is proposing to utilize existing bauxite impoundments and process water ponds, owned and maintained by Alcoa, for disposal of maintenance material over the long-term. Use of these areas is contingent upon the operation of the Alcoa facility. The applicant recognizes an excess of 650,000 cubic yards of maintenance material relative to disposal areas available for use at the present time. However, the plan, as described above, represents 29 years of capacity. CCC Project No.: 06-0261-F1; Type of Application: U.S.A.C.E. permit application #23868 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Railroad Commission under §401 of the Clean Water Act.

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Tammy Brooks, Consistency Review Coordinator, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200604006
Trace Finley
Deputy Commissioner, General Land Office
Coastal Coordination Council
Filed: August 2, 2006

♦ ♦ ♦

Comptroller of Public Accounts

Notice of Contract Award

Pursuant to Chapters 403 and 2156, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces the following contract awards:

The notice of request for proposals was published in the March 3, 2006, issue of the *Texas Register* (31 TexReg 1496) (RFP #175L).

The contractors will provide professional accounting services for the Texas Prepaid Higher Education Tuition Board.

The contract was awarded to McConnell & Jones, LLP, 3040 Post Oak Boulevard, Suite 1600, Houston, Texas 77056. The total amount of the contract shall not exceed Thirty-Five Thousand Five Hundred and No/100 Dollars ($35,500.00). The term of the contract is July 19, 2006 through August 31, 2007, with option for 2 additional 1-year renewals.

TRD-200603958
Pamela Smith
Deputy General Counsel, Contracts
Comptroller of Public Accounts
Filed: July 28, 2006

♦ ♦ ♦

Notice of Contract Award

Pursuant to Chapters 403 and 2156, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces the following contract award:

The notice of request for proposals was published in the March 31, 2006, issue of the *Texas Register* (31 TexReg 2897) (RFP #175m).

The contractors will provide Large Capitalization Value Equity Investment Management Services for the Texas Prepaid Higher Education Tuition Board.

The contract was awarded to Barrow, Hanley, Mewhinney & Strauss, Inc., 2200 Ross Avenue, 31st Floor, Dallas, Texas 75201. The total amount of the contract based on the fair market value of assets under management. The term of the contract is July 11, 2006 through August 31, 2011, with option for 2 additional 1-year renewals.

TRD-200603959
Pamela Smith
Deputy General Counsel, Contracts
Comptroller of Public Accounts
Filed: July 28, 2006

♦ ♦ ♦

Notice of Contract Award

Pursuant to Chapters 403 and 2156, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces the following contract award:

The notice of request for proposals was published in the April 7, 2006 issue of the *Texas Register* at (31 TexReg 3076) (RFP #175o).

The contractors will provide International Value Equity Investment Management Services for the Texas Prepaid Higher Education Tuition Board.

The contract was awarded to Mondrian Investment Partners Limited, 5th Floor, 10 Gresham Street, London EC2V 7JD, United Kingdom. The total amount of the contract is based on the fair market value of assets under management. The term of the contract is July 25, 2006 through August 31, 2011, with option for 2 additional 1-year renewals.

TRD-200603991
Pamela Smith
Deputy General Counsel, Contracts
Comptroller of Public Accounts
Filed: August 1, 2006

♦ ♦ ♦

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Tex. Fin. Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/07/06 - 08/13/06 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit thru $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/07/06 - 08/13/06 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-200604002
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: August 2, 2006

♦ ♦ ♦

Commission on State Emergency Communications

Notice of Joint Prehearing Conference

(SOAH DOCKET NO. 477-06-2682 and 477-06-2683)

The Commission on State Emergency Communications ("CSEC") will render an order on the applicability of Texas Health and Safety Code Annotated §771.0711 to all "wireless telecommunications connections" provided by wireless service providers in Texas regardless of the methodology of service by which wireless service is rendered (e.g. prepaid, postpaid, monthly or annual contracts). The legal question has arisen in conjunction with a request for refund by Tracfone Wireless before the Texas Comptroller of Public Accounts ("Comptroller"). Tracfone's request was abated for CSEC to issue a ruling pursuant to Texas Attorney General Opinion (GA-0401). Virgin Mobile has also filed a similar refund request before the Comptroller. CSEC has referred two dockets to the State Office of Administrative Hearings ("SOAH") on this legal threshold issue.

A joint prehearing conference will be held before an Administrative Law Judge with the State Office of Administrative Hearings on Tuesday, August 22, 2006, at 9:00 a.m., at the W.P. Clements Building, 4th floor, 300 West 15th Street, Austin, Texas. The purpose of the prehearing conference will be to discuss and/or determine the following preliminary issues:

1. additional notice, if any, to be made in these dockets;

2. general procedural issues;

3. whether a decision on the legal issues and the applicability of the statute is necessary prior to any factual findings;

4. the factual issues in dispute and need for an evidentiary hearing, if any;

5. establishment of a briefing schedule and a hearing if necessary; and

6. the motions filed with the Judge at SOAH by August 17, 2006.

CSEC's ruling on the threshold legal issue and the applicability of the statute to all "wireless telecommunications connections" will impact CSEC and Comptroller enforcement regarding the remittance of current, past and future wireless fees. Alternately, the ruling will also have an impact on potential refunds for previously remitted amounts by wireless service providers.

Respectfully Submitted by: Paul Mallett, Executive Director, Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942

Please direct all questions to CSEC Counsel of Record:

Rupaco T. Gonzalez, Jr.

The Gonzalez Law Firm, P.C.

8127 Mesa Drive, Ste B206, PMB #117

Austin, Texas 78759

(512) 921-7226 (voice)

(512) 241-0851 (fax)

gonzalezlawfirm@austin.rr.com

TRD-200603982
Paul Mallett
Executive Director
Commission on State Emergency Communications
Filed: July 28, 2006

♦ ♦ ♦

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **September 11, 2006**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on September 11, 2006**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: Advance Petroleum Distributing Company, Inc.; DOCKET NUMBER: 2006-0658-PST-E; IDENTIFIER: Regulated Entity Reference Number (RN) RN102485877; LOCATION: Fort Worth and Crowley, Tarrant County, Texas; TYPE OF FACILITY: fuel distributor; RULE VIOLATED: 30 TAC §115.221 and Texas Health and Safety Code (THSC), §382.085(b), by failing to control displaced vapors by a vapor control or a vapor balance system; and 30 TAC §115.224(1) and THSC, §382.085(b), by failing to conduct inspections of liquid leaks, visible vapors, or significant odors resulting from gasoline transfer; PENALTY: $1,600; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Alcoa Inc.; DOCKET NUMBER: 2006-0279-AIR-E; IDENTIFIER: RN100221472; LOCATION: Rockdale, Milam County, Texas; TYPE OF FACILITY: power plant; RULE VIOLATED: 30 TAC §111.151(a) and §116.115(b)(2)(F) and (c), Air Permit Numbers 48437, General Condition Numbers 8 and 56300, Special Condition Number 1, and THSC, §382.085(b), by failing to comply with its allowable particulate matter emission rate; PENALTY: $69,600; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(3) COMPANY: Viney Kharbanda dba Berry East Cleaners; DOCKET NUMBER: 2006-0805-DCL-E; IDENTIFIER: RN103957445; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: drop station; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew its registration; PENALTY: $711; ENFORCEMENT COORDINATOR: Libby Hogue, (512) 239-1165; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Border Steel, Inc.; DOCKET NUMBER: 2006-0140-AIR-E; IDENTIFIER: RN100213941; LOCATION: Vinton, El Paso County, Texas; TYPE OF FACILITY: steel works plant; RULE VIOLATED: 30 TAC §122.145(2)(C) and §122.146(2), Federal Operating Permit Number O-01456 General Terms and Conditions, and THSC, §382.085(b), by failing to submit the semiannual deviation reports and annual compliance certifications; PENALTY: $6,420; ENFORCEMENT COORDINATOR: Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(5) COMPANY: BP Products North America Inc.; DOCKET NUMBER: 2006-0099-AIR-E; IDENTIFIER: RN102535077; LOCATION: Texas City, Galveston County, Texas; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §116.110(a) and THSC, §382.085(b) and §382.0518(a), by allowing unauthorized emissions; PENALTY: $10,000; ENFORCEMENT COORDINATOR: Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: Orlando Cavazos dba Bryan Park Exxon; DOCKET NUMBER: 2006-0343-PST-E; IDENTIFIER: RN101678605; LOCATION: Mission, Hidalgo County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.51(b)(2)(B) and Texas Water Code (the Code), §26.3475(c)(2), by failing to have adequate spill containment equipment; 30 TAC §334.50(a)(1)(A) and the Code, §26.3475(c)(1), by failing to have a method of release detection capable of detecting a release; and 30 TAC §334.10(b), by failing to have records regarding the underground

storage tank (UST) system at the facility readily available for inspection; PENALTY: $3,571; ENFORCEMENT COORDINATOR: Tom Greimel, (512) 239-5690; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(7) COMPANY: Vien T. Le dba Classy Cleaners & Alterations; DOCKET NUMBER: 2006-0728-DCL-E; IDENTIFIER: RN104963111; LOCATION: Arlington, Tarrant County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102(a), by failing to complete and submit the required registration form; PENALTY: $853; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: Kee Ja Rhee dba Colonial Park Cleaners; DOCKET NUMBER: 2006-0764-DCL-E; IDENTIFIER: RN104028261; LOCATION: Arlington, Tarrant County, Texas; TYPE OF FACILITY: dry cleaning facility; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102(a), by failing to complete and submit the required registration form; PENALTY: $504; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: Driftwood 323 Vineyard, Ltd.; DOCKET NUMBER: 2006-0367-EAQ-E; IDENTIFIER: RN104873088; LOCATION: Driftwood, Hays County, Texas; TYPE OF FACILITY: tract of land being developed for a single family housing subdivision; RULE VIOLATED: 30 TAC §213.23(a), by failing to obtain approval of a contributing zone plan prior to commencement of a regulated activity; PENALTY: $1,800; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(10) COMPANY: John Pavlis dba Exxon RS 64935; DOCKET NUMBER: 2006-0691-PST-E; IDENTIFIER: RN102652005; LOCATION: Baytown, Chambers County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(d)(4)(A)(i) and the Code, §26.3475(c)(1), by failing to conduct inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank; and 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs; PENALTY: $3,680; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: Gentex Power Corporation; DOCKET NUMBER: 2006-0440-AIR-E; IDENTIFIER: RN100723915; LOCATION: Bastrop, Bastrop County, Texas; TYPE OF FACILITY: power plant; RULE VIOLATED: 30 TAC §122.145(2)(C) and THSC, §382.085(b), by failing to submit a timely semiannual deviation report; PENALTY: $1,600; ENFORCEMENT COORDINATOR: Libby Hogue, (512) 239-1165; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(12) COMPANY: Hydro Conduit of Texas, LP; DOCKET NUMBER: 2005-1131-IWD-E; IDENTIFIER: RN104578224; LOCATION: Roanoke, Denton County, Texas; TYPE OF FACILITY: ready-mixed concrete; RULE VIOLATED: 30 TAC §305.125(1) and (17), Texas Pollutant Discharge Elimination System (TPDES) General Permit Number 110443, Outfalls 001A and 002A, Part III.A., Permit Requirements, Numeric Effluent Limitations, Part III.C., Whole Effluent Toxicity Testing for Discharges, and Part III.H., General Requirements No. 7(c), and the Code, §26.121(a), by failing to comply with the permitted effluent limits for pH, oil and grease, and total suspended solids (TSS), by failing to collect and submit discharge monitoring report (DMR) parameter flow data, and by failing to collect and submit DMRs for the toxicity monitoring period; and 30 TAC §21.4 and the Code, §5.702, by failing to pay fees for consolidated water quality and associated late fees; PENALTY: $10,240; ENFORCEMENT COORDINATOR: Brent Hurta, (512) 239-6589; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: City of Lawn; DOCKET NUMBER: 2006-0164-PWS-E; IDENTIFIER: RN101406916; LOCATION: Lawn, Taylor County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(d)(2)(B), (e)(6)(A), and (m), by failing to provide a chlorine residual of 0.5 milligrams per liter (mg/L) in the distribution system, by failing to employ a licensed class "B" or higher surface water operator and provide a licensed "C" operator during operating hours, and by failing to maintain good maintenance and housekeeping practices; 30 TAC §290.44(d)(1) and (h)(1)(A), by failing to provide a minimum pressure of 35 pounds per square inch throughout the distribution system and by failing to install backflow prevention assemblies or air gaps; and 30 TAC §290.43(c)(6), by failing to have a water storage tank thoroughly tight against leakage; PENALTY: $3,454; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(14) COMPANY: Lucky Lady Oil Company; DOCKET NUMBER: 2006-0163-PST-E; IDENTIFIER: RN104809553 and RN103939690; LOCATION: Valley View, Cooke County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; and 30 TAC §334.22(a) and the Code, §5.702, by failing to pay UST fees and associated late fees; PENALTY: $15,200; ENFORCEMENT COORDINATOR: Marlin Bullard, (254) 751-0335; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(15) COMPANY: Chris Hanks dba Moss Lake Community Store; DOCKET NUMBER: 2006-0155-PWS-E; IDENTIFIER: RN101279982; LOCATION: Gainesville, Cooke County, Texas; TYPE OF FACILITY: public water system; RULE VIOLATED: 30 TAC §290.46(d)(1) and (d)(2)(A), (m)(1), and (n)(2), and §290.121(a), by failing to operate the disinfection equipment to maintain a minimum free chlorine residual of 0.2 milligrams per liter throughout the distribution system, by failing to conduct an annual inspection of the pressure tanks, and by failing to keep on file and make available for commission review an up-to-date chemical and microbiological monitoring plan and an up-to-date map of the distribution system; 30 TAC §290.42(e)(5) and (l), by failing to provide a housed and locked enclosure for the hypochlorinator solution containers and pumps and by failing to keep on file and make available for commission review a plant operations manual; 30 TAC §290.41(c)(1)(F) and (c)(3)(J) and (K), by failing to keep on file and make available for commission review a sanitary control easement and by failing to provide the well with a concrete sealing block extending at least three feet from the exterior well casing; 30 TAC §290.45(c)(1)(A)(ii) and THSC, §341.0315(c), by failing to provide a minimum pressure tank capacity of ten gallons per connection with a minimum of 220 gallons; and 30 TAC §290.51(a)(3) and the Code, §5.702, by failing to pay the public health service fee; PENALTY: $1,260; ENFORCEMENT COORDINATOR: Libby Hogue, (512) 239-1165; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(16) COMPANY: Nexxus Homes, Inc.; DOCKET NUMBER: 2006-0672-WQ-E; IDENTIFIER: RN104959168; LOCATION: Seagoville, Dallas County, Texas; TYPE OF FACILITY: home construction; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations (CFR) §122.26(a)(1), by failing to obtain

authorization to discharge storm water associated with construction activities; PENALTY: $1,200; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: Mrs. Frank (Ann) Vaughn dba Pete's Brake & Alignment; DOCKET NUMBER: 2006-0510-PST-E; IDENTIFIER: RN104896436; LOCATION: Wichita Falls, Wichita County, Texas; TYPE OF FACILITY: automotive repair; RULE VIOLATED: 30 TAC §334.50(b)(1)(A), by failing to provide release detection; and 30 TAC §334.49(a)(1), by failing to provide corrosion protection; PENALTY: $3,500; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(18) COMPANY: City of Pinehurst; DOCKET NUMBER: 2006-0479-MWD-E; IDENTIFIER: RN100528918; LOCATION: Pinehurst, Orange County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10597001, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, and the Code, §26.121(a), by failing to comply with the permit effluent limitations for five-day biochemical oxygen demand, TSS, flow, and chlorine; PENALTY: $5,568; ENFORCEMENT COORDINATOR: Ruben Soto, (512) 239-4571; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(19) COMPANY: Jesus L. Huereca dba Quick Trip; DOCKET NUMBER: 2006-0207-PST-E; IDENTIFIER: RN102491230; LOCATION: San Elizario, El Paso County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding USTs; 30 TAC §334.50(a)(1)(A) and the Code, §26.3475(c)(1), by failing to provide a method of release detection capable of detecting a release; 30 TAC §334.49(a) and the Code, §26.3475(d), by failing to provide proper corrosion protection; and 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $7,168; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(20) COMPANY: R.M. Dealer-BJM, L.L.C. dba Red McCombs Toyota; DOCKET NUMBER: 2006-0773-EAQ-E; IDENTIFIER: RN104945928; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: automobile sales; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of an Edwards Aquifer protection plan; PENALTY: $1,200; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(21) COMPANY: Southwest Recycled Materials, LP; DOCKET NUMBER: 2006-0146-AIR-E; IDENTIFIER: RN102537909; LOCATION: Forney, Kaufman County, Texas; TYPE OF FACILITY: portable concrete crusher; RULE VIOLATED: 30 TAC §116.115(b) and (c), New Source Review Air Permit Number 48523, Special Condition No. 7B, and General Condition Number 7, and THSC, §382.085(b), by failing to maintain records at the site and by failing to request relocation or change of location authorization and obtain written approval prior to moving; PENALTY: $4,000; ENFORCEMENT COORDINATOR: Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(22) COMPANY: StanTrans, Inc.; DOCKET NUMBER: 2006-0449-AIR-E; IDENTIFIER: RN100218767; LOCATION: Texas City, Galveston County, Texas; TYPE OF FACILITY: special warehouse and storage; RULE VIOLATED: 30 TAC §101.4 and THSC, §382.085(a) and (b), by allegedly having emitted into the atmosphere fumes of ethyl acrylate; PENALTY: $5,360; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(23) COMPANY: Texas A&M University; DOCKET NUMBER: 2006-0296-AIR-E; IDENTIFIER: RN100216274, RN102974839, RN102181302, RN102061165, and RN102077849; LOCATION: College Station, Brazos County, Texas; TYPE OF FACILITY: university; RULE VIOLATED: 30 TAC §122.146(2) and THSC, §382.085(b), by failing to timely submit the annual compliance certifications; PENALTY: $17,820; ENFORCEMENT COORDINATOR: Carolyn Lind, (903) 535-5100; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(24) COMPANY: Texas Aero Engine Services, L.L.C.; DOCKET NUMBER: 2006-0230-AIR-E; IDENTIFIER: RN100216225; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: aircraft engine rebuilding; RULE VIOLATED: 30 TAC §115.412(2)(F)(ii) and THSC, §382.085(b), by failing to keep the cover on the vapor degreaser closed; and 30 TAC §116.115(c), Permit by Rule §106.261 and §106.262, Registration Number 52797, and THSC, §382.085(b), by exceeding the maximum annual usage rates of aluminum and polyester resin; PENALTY: $3,840; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(25) COMPANY: Texas Sludge Disposal, Inc.; DOCKET NUMBER: 2006-0500-MLM-E; IDENTIFIER: RN103197638; LOCATION: San Patricio County, Texas; TYPE OF FACILITY: compost processing; RULE VIOLATED: 30 TAC §§101.4, 111.201, and 332.45(5), Municipal Solid Waste Permit Number 2319, Section IV.A., General Requirements, and THSC, §382.085(b), by failing to operate the plant in a manner as to prevent the potential of nuisance conditions and fire hazards; PENALTY: $2,180; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(26) COMPANY: Kim Lerche dba The Looking Glass; DOCKET NUMBER: 2006-0808-DCL-E; IDENTIFIER: RN104963921; LOCATION: Smithville, Bastrop County, Texas; TYPE OF FACILITY: dry cleaner drop station; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration form; PENALTY: $948; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(27) COMPANY: TM Chemicals Limited Partnership; DOCKET NUMBER: 2006-0266-AIR-E; IDENTIFIER: RN102844271; LOCATION: Deer Park, Harris County, Texas; TYPE OF FACILITY: chemical plant; RULE VIOLATED: 30 TAC §§111.111(a)(4)(A)(ii), 115.412(1)(A), and 122.143(4), Operating Permit Number O-01603, Special Terms and Conditions Numbers 3A(iii) and 10, and THSC, §382.085(b), by failing to maintain records of quarterly visible emissions; and 30 TAC §122.145(2) and THSC, §382.085(b), by failing to timely submit the semiannual deviation report; PENALTY: $7,600; ENFORCEMENT COORDINATOR: J. Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(28) COMPANY: Town of Windom; DOCKET NUMBER: 2005-0501-MWD-E; IDENTIFIER: TPDES Permit Number 10666001, RN103014619; LOCATION: Windom, Fannin County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIO-

LATED: 30 TAC §305.125(1) and (17), TPDES Permit Number 10666001, Effluent Limitations and Monitoring Requirements Numbers 1 and 6, Monitoring and Reporting Requirements Number 1, and the Code, §26.121(a), by failing to comply with the effluent limitations for TSS, dissolved oxygen, five-day biochemical oxygen demand, and by failing to provide monitoring results at the intervals specified in the permit; PENALTY: $5,778; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(29) COMPANY: Tin Trung Tran and Tuyet Thi Pham dba T P Cleaners; DOCKET NUMBER: 2006-0619-DCL-E; IDENTIFIER: RN104957097; LOCATION: Angleton, Brazoria County, Texas; TYPE OF FACILITY: drop station; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102(a), by failing to complete and submit the required registration form; PENALTY: $853; ENFORCEMENT COORDINATOR: Libby Hogue, (512) 239-1165; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(30) COMPANY: David Medina dba Whitis Dairy; DOCKET NUMBER: 2005-2028-AGR-E; IDENTIFIER: RN102169059; LOCATION: Stephenville, Erath County, Texas; TYPE OF FACILITY: dairy; RULE VIOLATED: 30 TAC §321.47(c)(l), (e)(6), (f)(11), (h)(1)(A), and (i), by failing to locate, construct, and manage the control facility in a manner that will protect surface and groundwater quality, by failing to maintain a permanent pond marker in the retention control structure, by failing to conduct an annual analysis of at least one representative sample of irrigation wastewater and manure/litter for total nitrogen, total phosphorus, and total potassium, by failing to cease applying waste or wastewater to the land management unit, and by failing to maintain on site all required records; PENALTY: $5,460; ENFORCEMENT COORDINATOR: Lynley Doyen, (512) 239-1364; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(31) COMPANY: W L & L:, Inc. dba Capitol Cleaners; DOCKET NUMBER: 2006-0819-DCL-E; IDENTIFIER: RN103956884; LOCATION: Pflugerville, Travis County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to complete and submit the required registration form; PENALTY: $948; ENFORCEMENT COORDINATOR: Steven Mahr, (512) 239-6017; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(32) COMPANY: Wood George & Co., Inc. dba Woodco USA; DOCKET NUMBER: 2006-0617-IHW-E; IDENTIFIER: RN100591494; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: commercial industrial facility which involves the production of petroleum drilling equipment; RULE VIOLATED: 30 TAC §335.69(f)(4) and 40 CFR §265.37(a)(1), by failing to make the required arrangements with local authorities; 30 TAC §335.513(a), by failing to maintain documentation of hazardous waste determination on a waste stream; 30 TAC §335.474(2), by failing to have a pollution prevention plan with annual executive summaries; and 30 TAC §335.6(c) and (h), by failing to update the notice of registration and submit notification to the TCEQ of the types of hazardous waste recycled at the facility and the method of storage prior to recycling; PENALTY: $2,688; ENFORCEMENT COORDINATOR: Colin Barth, (512) 239-0086; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-200603990

Mary Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: August 1, 2006

♦ ♦ ♦

Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **September 11, 2006**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on September 11, 2006**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Brownsville Val-Marts, L.L.C. dba Pronto 9; DOCKET NUMBER: 2005-1679-PST-E; TCEQ ID NUMBER: RN102465838; LOCATION: 1681 Los Ebanos, Brownsville, Cameron County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks (USTs); PENALTY: $2,100; STAFF ATTORNEY: Robert Mosley, Litigation Division, MC 175, (512) 239-0627; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(2) COMPANY: Claude Conner dba Conner Texaco Service Station; DOCKET NUMBER: 2004-0885-PST-E; TCEQ ID NUMBERS: 40735 and RN101722809; LOCATION: 1220 Fannin Street, Beaumont, Jefferson County, Texas; TYPE OF FACILITY: real property; RULES VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade

implementation date, an existing UST system for which any applicable component of the system was not brought into timely compliance with the upgrade requirements; 30 TAC §334.49(a) and Texas Water Code (TWC), §26.3475(c)(1), by failing to provide corrosion protection for his UST system; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at least once per month (not to exceed 35 days between each monitoring); 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum UST at the facility; 30 TAC §334.22(a) and TWC, §5.702, by failing to pay outstanding UST fees including penalties and interest; PENALTY: $9,450; STAFF ATTORNEY: Justin Lannen, Litigation Division, MC R-4, (817) 588-5927; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(3) COMPANY: Elton W. Thompson dba Peterson Place Subdivision Water System; DOCKET NUMBER: 2004-0320-PWS-E; TCEQ ID NUMBER: RN101199339; LOCATION: 2732 County Road 603, Dayton, Liberty County, Texas; TYPE OF FACILITY: owns and operates, for compensation, equipment and facilities, for the transmission, storage, distribution, sale, or provision of potable water to the public; RULES VIOLATED: 30 TAC §290.45(b)(1)(A)(I) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to meet the TCEQ Minimum Water System Capacity Requirements of a well capacity of 1.5 gallons per minute production; 30 TAC §291.101(a) and TWC, §13.242(a), by failing to obtain from the TCEQ a certificate of public convenience and necessity; 30 TAC §290.109(c)(2) and §290.122 and THSC, §341.033(d), by failing to collect bacteriological samples and provide public notice of the violations; 30 TAC §290.46(m), by failing to ensure that the maintenance and housekeeping practices used by the facility ensured the good working condition of the facility equipment; 30 TAC §290.44(d)(4), by failing to provide accurate metering devices at each service connection to provide water usage data; 30 TAC §290.45(b)(1)(A)(iii) and THSC, §341.0315(c), by failing to meet the TCEQ's Minimum Water System Capacity Requirements of a pressure tank capacity of 50 gallons per connection; PENALTY: $8,327; STAFF ATTORNEY: James Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: George W. Jackson dba Fort Jackson Mobile Estates; DOCKET NUMBER: 2006-0289-PWS-E; TCEQ ID NUMBER: RN102698545; LOCATION: 116th South University, Lubbock, Lubbock County, Texas; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.106(f)(3) and THSC, §341.0315(c), by failing to comply with the maximum contaminant level of 4.0 milligrams per liter for fluoride; 30 TAC §290.51(a)(3) and TWC, §5.702, by failing to pay public health service fees; PENALTY: $318; STAFF ATTORNEY: Shawn Slack, Litigation Division, MC 175, (512) 239-0063; REGIONAL OFFICE: Lubbock Regional Office, 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(5) COMPANY: John Balstad; DOCKET NUMBER: 2005-0730-LII-E; TCEQ ID NUMBER: RN103660353; LOCATION: 5300 and 5304 Maple Court, Flower Mound, Dallas County, Texas; TYPE OF FACILITY: landscape irrigator; RULES VIOLATED: 30 TAC §344.58(c), by authorizing or allowing someone else to use his license to act as a licensed irrigator on the installation of irrigation systems; 30 TAC §344.70, by failing to comply with reasonable inspection requirements, ordinances, or regulations designed to protect the water supply which relates to work performed or to be performed within a local political subdivision's territory; 30 TAC §344.96, by failing to honor written statements of guarantee for materials and labor furnished in the installation of the irrigation systems installed at the sites under the authority of Mr. Balstad's Irrigator License; PENALTY: $2,250; STAFF ATTORNEY: Lena Roberts, Litigation Division, MC 175, (512) 239-0019; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: Larry D. Lindsey dba Absolutely Foreign Auto Parts; DOCKET NUMBER: 2005-1102-WQ-E; TCEQ ID NUMBER: RN102955630; LOCATION: 10418 Mykawa Road, Houston, Harris County, Texas; TYPE OF FACILITY: auto salvage yard; RULES VIOLATED: 30 TAC §281.25(a)(4), Texas Pollutant Discharge Elimination System (TPDES) General Permit No. TXR050000 Part III., Section A.2., and 40 Code of Federal Regulations (CFR) §122.26(c), by failing to update the storm water pollution prevention plan team member list; 30 TAC §281.25(a)(4), TPDES General Permit No. TXR050000 Part III., Section A.3.(c), and 40 CFR §122.26(c), by failing to conduct a non-storm water investigation within 90 days of filing a notice of intent for permit coverage; 30 TAC §281.25(a)(4), TPDES General Permit No. TXR050000, Part III., Section A.5.(f), and 40 CFR §122.26(c), by failing to conduct annual employee training from 2001 - 2004; 30 TAC §281.25(a)(4), TPDES General Permit No. TXR050000, Part III., Section A.4.(b), and 40 CFR §122.26(c), by failing to adequately develop a narrative description of all activities that could potentially be expected to contribute pollutants to storm water; 30 TAC §281.25(a)(4), TPDES General Permit No. TXR050000, Part III., Section A.4.(c)(11), and 40 CFR §122.26(c), by failing to record a significant spill on the site map; 30 TAC §281.25(a)(4), TPDES General Permit No. TXR050000, Part III., Section A.5.(g), and 40 CFR §122.26(c), by failing to conduct and document quarterly site inspections from January - March 2005, and in all four quarters of 2003 and 2004; 30 TAC §281.25(a)(4), TPDES General Permit No. TXR050000, Part III., Section A.5.(h), and 40 CFR §122.26(c), by failing to conduct and document quarterly visual monitoring of the storm water outfall from January - March 2005, and in all four quarters of 2003 and 2004; TWC, §26.121(a), and TPDES General Permit No. TXR050000, Part V., Section M.3, by failing to dispose of fluids in accordance with all applicable state and federal regulations; 30 TAC §281.25(a)(4), TPDES General Permit No. TXR050000, Part III., Section A.7.(b), and 40 CFR §122.26(c), by failing to conduct the annual comprehensive site evaluation from 2001-2004; 30 TAC §281.25(a)(4) and TPDES General Permit No. TXR050000, Part III., Section D.1.(c) and 2.(c), and 40 CFR §122.26(c), by failing to conduct the annual Hazardous Metals Monitoring from 2002 - 2004; 30 TAC §281.25(a)(4) and TPDES General Permit No. TXR050000, Part V., Section M.3., and 40 CFR §122.26(c), by failing to conduct and document quarterly inspection of vehicles that are stored containing fluids from January - March 2005, and in all four quarters of 2002 - 2004; 30 TAC §281.25(a)(4) and TPDES General Permit No. TXR050000, Part V., Section M.4., and 40 CFR §122.26(c), by failing to conduct the quarterly benchmark samples for total suspended solids, iron, lead, and aluminum at the storm water outfall in all four quarters of 2003 and 2004; PENALTY: $37,380; STAFF ATTORNEY: Shawn Slack, Litigation Division, MC 175, (512) 239-0063; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: Mack Pool dba A&P Water Company; DOCKET NUMBER: 2005-0962-MLM-E; TCEQ ID NUMBER: RN102918794; LOCATION: 3397 United States Highway 259 South, Henderson, Rusk County, Texas; TYPE OF FACILITY: operates equipment and facilities for the transmission, storage, distribution, sale, or provision of potable water to the public; RULES VIOLATED: 30 TAC §290.46(i), by failing to adopt an adequate plumbing ordinance, regulations, or service agreement,

with provisions for proper enforcement, to prevent cross-connections and other unacceptable plumbing practices; 30 TAC §290.46(j), by failing to complete a customer service inspection certificate prior to providing continuous water service to new construction; 30 TAC §290.46(e)(3)(A) and THSC, §341.033(a), by failing to ensure that the System, which serves fewer than 250 connections and uses purchased treated water, was at all times operated under the direct supervision of a water works operator who held an applicable, valid "Class D" (or higher) license issued by the executive director; 30 TAC §§290.46 and (n)(2), 209.109(c)(1), and 290.121, by failing to maintain: a record of water works operation and maintenance activities, an accurate and up-to-date map of the distribution system (so that valves and mains can be easily located during emergencies), a system monitoring plan, and an up-to-date chemical and microbiological monitoring plan, and by failing to submit periodic operating reports which report: the amount of chemicals used; the volume of water treated; the date, location, and nature of water quality; pressure or outage complaints received and the results of any subsequent complaint investigation; the dates that dead-end mains were flushed; the dates that storage tanks and other facilities were cleaned; the maintenance records for water system equipment and facilities; and a daily record or a monthly summary of the work performed and the number of hours worked by each of the part-time operators used to meet the requirements of 30 TAC §290.46(e); 30 TAC §290.46(m)(1)(A), by failing to ensure that each of the system's ground tanks were inspected at least annually by water system personnel or a contracted inspection service to determine whether: the vents were in place and properly screened; the roof hatches closed and locked; flap valves and gasketing provided adequate protection against insects, rodents, and other vermin; the interior and exterior coating systems were continuing to provide adequate protection to all metal surfaces; and the tank remained in a watertight condition; 30 TAC §290.43(d)(3) and §290.46(m)(1)(B), by failing to ensure that each of the system's pressure tanks were inspected at least annually by water system personnel or a contracted inspection service to determine whether: the pressure release device and pressure gauge were working properly, the air-water ratio was being maintained at the proper level, the exterior coating systems were continuing to provide adequate protection to all metal surfaces, and the tank remained in watertight condition, and by failing to provide facilities for maintaining the air-water-volume at the design water level and working pressure with air injection lines equipped with filters or other devices to prevent compressor lubricants and other contaminants from entering the pressure tank; 30 TAC §290.109(c)(2)(A)(iii) and THSC, §341.033(d), by failing to, at least one time per month, collect and submit routine bacteriological samples for bacteriological analysis, taken from the public water supply; 30 TAC §288.20, by failing to have a drought contingency plan for the System; 30 TAC §290.109(c)(2)(A)(ii) and §290.122(c)(2)(A), by failing to collect and submit routine bacteriological samples for the months of July - November of 2005, and by failing to provide public notice of the monitoring violations; PENALTY: $6,600; STAFF ATTORNEY: Lena Roberts, Litigation Division, MC 175, (512) 239-0019; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(8) COMPANY: Sentinel Waste, LLC; DOCKET NUMBER: 2005-0040-MSW-E; TCEQ ID NUMBER: RN104009501; LOCATION: 9225 Highway 183 South, Austin, Travis County, Texas; TYPE OF FACILITY: facility involving the management and disposal of municipal solid waste; RULES VIOLATED: 30 TAC §330.4(a), by failing to obtain proper authorization from TCEQ for the operation of a Type V processing facility; PENALTY: $11,550; STAFF ATTORNEY: Shawn Slack, Litigation Division, MC 175, (512) 239-0063; REGIONAL OFFICE: Austin Regional Office, 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(9) COMPANY: Terry L. Smith dba Triple B Bumper MFG; DOCKET NUMBER: 2004-0883-IHW-E; TCEQ ID NUMBER: RN101622043; LOCATION: 312 West Mitchum Street, Malakoff, Henderson County, Texas; TYPE OF FACILITY: automotive bumper manufacturing and refurbishing shop; RULES VIOLATED: 30 TAC §335.4 and TWC, §26.121, by failing to prevent an unauthorized discharge of industrial solid waste; 30 TAC §335.62 and 40 CFR §262.11, by failing to complete hazardous waste determinations on all wastes generated at the Facility; 30 TAC §335.6(a), by failing to notify the executive director that storage, processing, or disposal activities were planned at least 90 days prior to engaging in such activities; 30 TAC §335.69(f)(5)(C), by failing to ensure that all employees were thoroughly familiar with proper waste handling and emergency procedures relevant to their responsibilities during normal facility operations and emergencies; 30 TAC §335.69(f)(2) and (f)(4) and 40 CFR §262.34(a)(2) and §262.173(a), by failing to label two hazardous waste containers stored at the facility as required under commission rules and the CFR and by failing to maintain hazardous waste containers in good condition and properly closed during storage; 30 TAC §335.69(h), failing to comply with the 180-day accumulation time limit for a small quantity generator; PENALTY: $11,160; STAFF ATTORNEY: James Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(10) COMPANY: Trinh Le dba Fas Stop Food Mart; DOCKET NUMBER: 2005-1550-PST-E; TCEQ ID NUMBER: RN102269131; LOCATION: 4030 Vance Jackson Road, San Antonio, Bexar County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the UST for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); 30 TAC §334.50(b)(2)(A)(i)(II) and TWC, §26.3475(a), by failing to have the line leak detectors tested at least once per year for performance and operational reliability; 30 TAC §334.50(b)(2)(B) and TWC, §26.3475(a), by failing to monitor pressurized piping associated with the UST system in a manner designed to detect releases from any portion of the piping system; 30 TAC §334.10(b), by failing to make available legible copies of all required records for inspection upon request by agency personnel; 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube according to the UST registration and self-certification form; PENALTY: $4,725; STAFF ATTORNEY: Deanna Sigman, Litigation Division, MC 175, (512) 239-0619; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(11) COMPANY: Uppal Bros., Inc. dba Save Way Food Mart; DOCKET NUMBER: 2003-1165-PST-E; TCEQ ID NUMBER: RN102035367; LOCATION: 6620 Brentwood Stair Road, Forth Worth, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(a) and TWC, §26.3475(d), by failing to install a method of corrosion protection for the UST systems; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs on or about January 28, 2003; 30 TAC §334.50(b)(1)(A) and (d)(1)(B)(ii), and TWC, §26.3475(c)(1), by failing to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for the UST systems; 30 TAC § 334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the tank

number was permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube according to the UST registration and self-certification form; 30 TAC §334.8(c)(4)(A)(vii) and (c)(5)(B)(ii), and TWC, §26.346(c)(3), by failing to timely renew the delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date of the delivery certificate; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; Default Order Docket No. 2002-0860-PST-E, by failing to pay $1,264 of the administrative penalty assessed by Default Order Docket No. 2002-0860-PST-E, effective April 5, 2004; PENALTY: $35,100; STAFF ATTORNEY: Shawn Slack, Litigation Division, MC 175, (512) 239-0063; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200603989
Mary Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: August 1, 2006

♦ ♦ ♦

Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **September 11, 2006**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on September 11, 2006**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: City of Coleman; DOCKET NUMBER: 2003-0347-MLM-E; TCEQ ID NUMBERS: 0003-M, RN102521994, 0420001, and RN102424645; LOCATION: 201 North Colorado Street, Coleman, Coleman County, Texas; TYPE OF FACILITY: electric generation power plant; RULES VIOLATED: 30 TAC §122.146(2); Federal Operating Permit No. O-00102, Provision (b)(2), and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit annual Title V Permit compliance certification no later than 30 days after the end of the certification period; 30 TAC §122.504(a)(4)(A); Federal Operating Permit No. O-00102, Provision (b)(3), and THSC, §382.085(b), by failing to submit an updated General Operating Permit (GOP) application no later than 45 days after the issuance of the revised GOP; 30 TAC §290.42(d)(9)(A), by failing to operate parallel treatment facilities for flocculation; 30 TAC §290.46(m)(1)(A), by failing to maintain the exterior coating systems to adequately protect the metal surfaces of the 0.500 million gallon and 0.200 million gallon ground storage tanks; 30 TAC §290.113(b)(1), and THSC, §341.0315(c), by exceeding the Maximum Contaminant Level (MCL) based on a running annual average for total trihalomethanes during the second quarter of 2004; PENALTY: $9,115; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(2) COMPANY: Derdeyn/Ford, Inc.; DOCKET NUMBER: 2003-0413-MWD-E; TCEQ ID NUMBERS: 11260-001 and RN102080777; LOCATION: 509 Tejas Road, Jefferson, Marion County, Texas; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: 30 TAC §305.125(5), Texas Water Code (TWC), §26.121(a), and Texas Pollutant Discharge Elimination System (TPDES) Permit No. 11260-001, Final Effluent Limitation and Monitoring Requirements Nos. 1 and 2, and Operational Requirements (1) and (4), by failing to have a chlorine residual of at least 1.0 milligram per liter (mg/l) at Outfall 001 for the month of April 2003, (the value recorded was 0.0 mg/l), by failing to comply with the permitted discharge limitations as shown in the Effluent Limit Violation Table, and by failing to properly operate and maintain the facility and systems of treatment, collection, disposal, and control, at all times; 30 TAC §319.1 and §305.125(1), and TPDES Permit No. 11260-001, Monitoring and Reporting Requirements No. 1, by failing to report monthly effluent monitoring results, by failing to submit Discharge Monitoring Reports (DMRs) as required for the months of September 2001 and March 2003, and by failing to submit monthly DMRs by the 20th day of each month to the TCEQ for the months from July 2001 to February 2003; 30 TAC §305.125(1) and TPDES Permit No. 11260-001, Monitoring and Reporting Requirements No. 7, by failing to report effluent violations which deviated from the permitted effluent limitation by more than 40% for the months of April, May, and October 2002, and February, March, April, and August, 2003, to the TCEQ; 30 TAC §§30.350(i), 30.331(b), and 305.125(1) and TPDES Permit No. 11260-001, Other Requirements No. 1, by failing to ensure that the facility was operated by a licensed wastewater operator; TWC, §26.121(a) and TPDES Permit No. 11260-001, Final Effluent Limitations and Monitoring Requirements No. 1, by failing to comply with the permitted discharge limitations at Outfall 001 of flow in conduit or through treatment plant of 0.002 million gallons per day for August, 2003; PENALTY: $41,933; STAFF ATTORNEY: Alfred Oloko, Litigation Division, MC R-12, (713) 422-8918; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535- 5100.

(3) COMPANY: Ellinger Sewer and Water Supply Corporation; DOCKET NUMBER: 2005-0548-MWD-E; TCEQ ID NUMBER: RN101529022; LOCATION: 1,400 feet north of State Highway 71 and 1,900 feet northwest of Farm-to-Market Road 2503, near Ellinger, Fayette County, Texas; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: TPDES Permit No. 10945-001 Effluent Limitations and Monitoring Requirements Nos. 1 and 6, 30 TAC §305.125(1), and TWC, §26.121(a), by failing to comply with effluent limitations; TPDES Permit No. 10945-001 Sludge Provisions, Section

II.F. Reporting Requirements and 30 TAC §305.125(1), by failing to submit annual DMRs for sewage sludge data by September 1, 2004, for the time period of August 1, 2003 - July 31, 2004; PENALTY: $11,750; STAFF ATTORNEY: Shawn Slack, Litigation Division, MC 175, (512) 239-0063; REGIONAL OFFICE: Austin Regional Office, 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(4) COMPANY: Erik Howard dba Howard Ranch Subdivision; DOCKET NUMBER: 2005-1244-EAQ-E; TCEQ ID NUMBER: RN104608732; LOCATION: on the contributing zone of the Edwards Aquifer at the intersection of Ranch-to-Market Road 12 and Farm-to-Market Road 150, Hays County, Texas; TYPE OF FACILITY: subdivision; RULES VIOLATED: 30 TAC §213.21(d), by failing to submit and receive approval of a contributing zone plan prior to initiating construction over the Edwards Aquifer Contributing Zone; PENALTY: $36,000; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Austin Regional Office, 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(5) COMPANY: Flynn WSC; DOCKET NUMBER: 2004-1929-PWS-E; TCEQ ID NUMBER: RN101240844; LOCATION: near the intersection of Farm-to-Market Road 39 and Farm-to-Market Road 977, Leon County, Texas; TYPE OF FACILITY: public water supply system; RULES VIOLATED: 30 TAC §290.45(f) and THSC, §341.0315(c), by failing to provide a required purchased water contract; 30 TAC §290.45(b)(1)(C)(iii) and THSC, §341.0315(c), by failing to provide the required two or more service pumps having a total capacity of 2.0 gallons per minute per connection; 30 TAC §290.45(b)(1)(C)(iv) and THSC, §341.0315(c), by failing to provide either an elevated storage capacity of 100 gallons per connection or the required pressure tank capacity of 20 gallons per connection; 30 TAC §290.41(c)(3)(B), by failing to provide a well casing of the required 18 inches above the ground surface; PENALTY: $1,047; STAFF ATTORNEY: Shawn Slack, Litigation Division, MC 175, (512) 239-0063; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(6) COMPANY: Hector Silva dba Chaparral Mini Mart and Petra Silva dba Chaparral Mini Mart; DOCKET NUMBER: 2004-1776-PST-E; TCEQ ID NUMBER: RN101737773; LOCATION: 604 West Comal Street, Pearsall, Frio County, Texas; TYPE OF FACILITY: convenience store which had retail sales of gasoline; RULES VIOLATED: 30 TAC §334.6, by failing to comply with underground storage tank (UST) construction notification requirements; 30 TAC §334.55(b), by failing to comply with permanent removal from service requirements for USTs, including a determination of whether any prior releases of a stored regulated substance had occurred before the attempted removal of the two UST systems; 30 TAC §334.47(a)(2), by failing to permanently remove from service any UST system that was not brought into timely compliance with upgrade requirements no later than sixty days after the prescribed implementation date; PENALTY: $6,300; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(7) COMPANY: Jay Leslie, Inc. dba Marks Crane & Rigging Co.; DOCKET NUMBER: 2005-1794-UIC-E; TCEQ ID NUMBER: RN102868999; LOCATION: 6501 East Interstate 20, Odessa, Ector County, Texas; TYPE OF FACILITY: industrial rental facility; RULES VIOLATED: 30 TAC §331.5(a) and TWC, §27.011, by failing to obtain a permit or authorization from the commission prior to the use or operation of an injection well, which caused or allowed the movement of fluid that could result in the pollution of an underground source of drinking water; PENALTY: $2,250; STAFF ATTORNEY: Lena Roberts, Litigation Division, MC 175, (512) 239-0019; REGIONAL OFFICE: Midland Regional Office, 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(8) COMPANY: Jose Garcia dba Neighborhood Trucks & Auto Repair; DOCKET NUMBER: 2004-1998-AIR-E; TCEQ ID NUMBER: RN103009098; LOCATION: 7900 Mendez Street, Houston, Harris County, Texas; TYPE OF FACILITY: automotive repair business; RULES VIOLATED: 30 TAC §116.110(a) and THSC, §382.085(b) and §382.0518(a), by failing to obtain a permit prior to constructing and operating a facility with surface coating operations and by failing to satisfy the conditions for exempt facilities; 30 TAC §115.422(1)(A) and THSC, §382.085(b), by failing to wash, rinse, and drain parts used in surface coating operations in an enclosed system or in a non-enclosed system with a solvent vapor pressure less than 100 millimeters of mercury at 68 degrees Fahrenheit and a drain leading to an enclosed reservoir; 30 TAC §115.421(a)(8)(B)(i), (iv), and (ix), and THSC, §382.085(b), by failing to comply with the volatile organic compound emission limits for primer, single state topcoats, and wipe-down solutions used in vehicle refinishing; 30 TAC §115.426(1)(B) and THSC, §382.085(b), by failing to maintain records of the quantity and type of each coating and solvent used at the site; PENALTY: $9,240; STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: Mardoche Abdelhak dba Big Trees Trailer City; DOCKET NUMBER: 2005-0752-PWS-E; TCEQ ID NUMBERS: 0150131 and RN101652048; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.109(f)(3) and §290.122(b)(2)(A) and THSC, §341.031(a), by exceeding the non-acute MCL for total coliform bacteria and by failing to provide public notice of the violations; 30 TAC §290.109(c)(3)(A)(ii), by failing to conduct repeat monitoring in February 2003, after a routine sample was found to contain coliform organisms; 30 TAC §290.109(c)(2)(F) and §290.122(c)(2)(A), by failing to collect at least five routine samples during the month following a total coliform positive sample and to notify persons served by the system; PENALTY: $3,133; STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(10) COMPANY: Shaheen International, Inc. dba Fisco; DOCKET NUMBER: 2005-0131-PST-E; TCEQ ID NUMBER: RN101447126; LOCATION: 4015 Eastex Freeway, Beaumont, Jefferson County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b), by failing to keep on file and make available for commission review a site plan showing that the location of the observation well is within the pit area; 30 TAC §115.246(7)(A) and THSC, §382.085(b), by failing to keep on file and make available for commission review the correct California Air Resources Board (CARB) executive order for the station and Stage II employee training records; 30 TAC §334.8(c)(5)(C), by failing to permanently tag or label each UST fill tube at the station with the number used to identify the tank on the registration and self-certification form filed with the commission; 30 TAC §334.50(b)(2)(A)(i)(III) and (b)(2)(A)(ii)(I), and TWC, §26.3475(a), by failing to perform an annual performance test on the existing line leak detectors and by failing to test the piping once per year by means of a piping tightness test or monitor the piping for releases at least once every month (not to exceed 35 days between each monitoring); 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor tanks in a manner which will detect a release at a frequency of at least once every month (not to exceed 35 days between each monitoring); 30 TAC §334.50(d)(1)(B)(ii), by failing to conduct inventory control and

reconcile inventory control records monthly in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1% of flow-through plus 130 gallons; 30 TAC §115.242(9) and THSC, §382.085(b), by failing to post operating instructions conspicuously on the front of each dispenser equipped with Stage II Vapor Recovery System; 30 TAC §115.242(3) and THSC, §382.085(b), by failing to maintain all components of the Stage II Vapor Recovery System in proper operating condition and free of defects that would impair the effectiveness of the system in accordance with the CARB order; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to conduct a pressure decay test during the twelve-month period preceding the investigation; PENALTY: $21,375; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(11) COMPANY: South-Tex Concrete, Inc.; DOCKET NUMBER: 2005-1967-AIR-E; TCEQ ID NUMBER: RN102764867; LOCATION: 2662 West Indiana, Brownsville, Cameron County, Texas; TYPE OF FACILITY: concrete batch plant; RULES VIOLATED: 30 TAC §116.115(c) and §116.116(b)(1)(C); TCEQ Air Permit No. 8371, Special Condition No. 1; and THSC, §382.085(b), by failing to comply with the permitted maximum annual concrete production limit of 15,000 cubic yards per year by producing 67,346.25 cubic yards in 2003, 79,474.50 cubic yards in 2004, and 53,064.75 cubic yards as of August 2005; 30 TAC §116.115(c); TCEQ Air Permit No. 8371, Special Condition No. 2.A; and THSC, §382.085(b), by failing to ensure that all in-plant roads are paved; 30 TAC §116.115(c); TCEQ Air Permit No. 8371, Special Condition No. 2.C; and THSC, §382.085(b), by failing to provide a mechanism in the cement silo to warn operators that the silo was full so that it did not become overloaded at any time; 30 TAC §116.115(b)(2)(E); TCEQ Air Permit No. 8371, Special Condition No. 2.B; and THSC, §382.085(b), by failing to maintain records to demonstrate compliance with permit requirements; PENALTY: $10,500; STAFF ATTORNEY: Robert Mosley, Litigation Division, MC 175, (512) 239-0627; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

TRD-200603988
Mary Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: August 1, 2006

♦ ♦ ♦

Texas Health and Human Services Commission

Notice of Public Hearing on Proposed Medicaid Payment Rates

Hearing. The Texas Health and Human Services Commission will conduct a public hearing to receive public comment on the proposed Reimbursement Rate for Medicaid Mental Health Rehabilitative Services Skills Training and Development - Group - Child/Adolescents. The proposed payment rate will be effective September 1, 2006. The proposed payment rate was developed pursuant to the adopted reimbursement methodology rules, 1 Texas Administrative Code (TAC) §355.781, which were published in the July 7, 2006, issue of the *Texas Register* (31 TexReg 5453). The hearing will be held in compliance with 1 TAC §355.105, which requires public hearings on proposed Medicaid reimbursements.

The public hearing will be held on August 24, 2006, at 1:30 p.m. in the Big Bend Conference Room, Texas Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Blvd, Austin, Texas 78758. Written comments may be submitted by mail to the Texas Health and Human Services Commission, Medicaid Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Irene Cantu at (512) 491-1998; or by e-mail to Irene.Cantu@hhsc.state.tx.us. Hand deliveries will be accepted at Braker Center, Mail Code H-400, 11209 Metric Blvd, Austin, Texas 78758. Comments must be received by 5:00 p.m. the day of the hearing. Interested parties may obtain a copy of the briefing package prior to the hearing by calling Irene Cantu at (512) 491-1358.

Persons requiring ADA accommodation or auxiliary aids or services should contact Irene Cantu by calling (512) 491-1358, at least 72 hours prior to the hearing.

TRD-200604001
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: August 2, 2006

♦ ♦ ♦

Texas Department of Housing and Community Affairs

Draft Policy for Addressing Cost Increases for 2004 and 2005 Competitive Housing Tax Credit Developments

The Texas Department of Housing and Community Affairs (the "Department") proposes this new policy concerning the cost increases to the 2004 and 2005 competitive housing tax credit developments. This policy is proposed new in order to implement changes that will effectively improve the financial feasibility of the developments.

Comments may be submitted to Jennifer Joyce, Acting Manager of Multifamily Finance, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941 or facsimile at (512) 475-0764 or e-mail at jennifer.joyce@tdhca.state.tx.us no later than 5:00 p.m., September 15, 2006.

The proposed new policy is proposed pursuant to the authority of the Texas Government Code, Chapter 2306.

The proposed new policy will affect no other code, article or statue.

Section I. Introduction and Purpose

The Texas Department of Housing and Community Affairs (the "Department") has received numerous inquiries relating to increased direct construction costs over the past nine months that generally are attributed to the impact of Hurricanes Katrina and Rita last September. While limited data at a national or state level relating to these cost increases is available at this time, the Department has researched this issue using comparative cost multipliers by region from 2003 to 2006 from Marshall & Swift. Department research indicates that the existing 2004 and 2005 9% Housing Tax Credit (HTC) developments in the Department's inventory are affected by these increases in direct construction costs by an average of 14%. The purpose of this policy is to outline how the Department will act to assist those developments in ascertaining additional tax credits to accommodate those cost increases. It is estimated that the total amount of additional credits that might be necessary to accommodate this policy for 2004 is $3,701,793 that would be utilized from the 2007 credit ceiling and for 2005 is $4,387,658 that would be utilized from the 2008 credit ceiling for a total of $8,089,451.

Section II. Method of Allocation

The Department will offer an allocation of additional credits to all competitive HTC developments that were awarded in 2004 and 2005 that were not placed in service before 2006. Developments awarded a Forward Commitment in 2005 for tax credits from the 2006 HTC Ceil-

ing are considered a 2005 competitive HTC development. The additional allocation will be made pursuant to a binding commitment to allocate credits from the Department's 2007 Tax Credit Ceiling to all awarded 2004 competitive HTC developments and from the Department's 2008 Tax Credit Ceiling to all awarded 2005 competitive HTC developments. The amount of each development's award will be determined by the Department using a methodology that applies a 14% increase to the direct construction costs as reflected in the most recent Underwriting report and then completes the credit determination based on that adjustment. The amount of the additional 2007 or 2008 allocation will be the difference between the newly calculated credit amount and the amount originally committed.

Section III. Procedures

The following procedures will be utilized in implementing this process.

1. The Department will issue all 2004 and 2005 awarded developments from the 2004 and 2005 credit ceiling a letter indicating the specific additional allocation amount as calculated by the Department and instructions consistent with this policy for their return submission.

2. Owners that choose not to utilize the additional credits will return an election form indicating their decision not to proceed with the allocation by October 31, 2006. No credits will be set aside from the 2007 or 2008 HTC Ceiling for such developments.

3. Owners that choose to utilize the additional allocation will execute and return the binding agreement, pursuant to Treasury Regulation §1.42-8, in a format provided to the owner, with a fee equal to 5% of the credit amount allocated by October 31, 2006.

4. The Department will review the binding agreement and, upon satisfaction, the agreement will be executed by the Executive Director of the Department. The execution by the Executive Director will occur no later than December 31, 2006 for the 2004 developments and 2005 developments placed in service in 2006, and no later than March 1, 2007 for the 2005 developments to be placed in service after 2006.

5. Upon placement in service and submission of the cost certification, the Applicant will be required to substantiate their total costs and credit allocation consistent with the requirements set forth in the Cost Certification Manual. Unsubstantiated credits for 2004 developments will be returned to the 2007 HTC Ceiling, and for 2005 developments unsubstantiated credits will be returned to the 2008 HTC Ceiling. Specifically, this analysis will be based on the development details originally proposed and credits will not be eligible for new activities not originally proposed. Further, a detailed cost analysis will be required at the time of cost certification that will be utilized to ensure development costs specifically increased by the estimated 14%.

6. As described in §50.10(c)(1) of the QAP: "Applications that are submitted under the 2006 QAP and granted a Forward Commitment of 2007 Housing Tax Credits are considered by the Board to comply with the 2007 QAP by having satisfied the requirements of this 2006 QAP, except for statutorily required QAP changes."

7. The application will be reviewed before issuance of a letter occurs to ensure that they do not have material non-compliance consistent with §50.5(b)(2) and (3) of the QAP.

8. For all allocations made under this policy the credit amount awarded for 2004 developments will be attributed to the proper region and set-asides from the 2007 Ceiling, and for 2005 developments will be attributed to the proper region and set-asides from the 2008 Ceiling to ensure adherence to the Regional Allocation Formula in 2007 and 2008.

TRD-200604018

Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: August 2, 2006

♦ ♦ ♦

HOME Investment Partnerships Program Notice of Funding Availability

Hurricane Rita Disaster Relief

The Texas Department of Housing and Community Affairs (Department) announces the availability of approximately $4,200,000 for Hurricane Rita Disaster Relief funds under the HOME Investment Partnerships Program (HOME). The availability and use of these funds are subject to the State HOME Rules (10 TAC Chapter 53) and the Federal HOME regulations governing the HOME Program (24 CFR Part 92), unless specifically stated herein. Please note that some HOME Program requirements have been waived by the United States Department of Housing and Urban Development for participating jurisdictions in Presidentially declared disaster areas due to Hurricane Rita.

ALLOCATION OF HURRICANE RITA DISASTER RELIEF FUNDS

No Single Family activities will be funded in a Participating Jurisdiction (PJ). In accordance with §2306.111(c), funds under this NOFA are subject to the Regional Allocation Formula process.

ELIGIBLE APPLICANTS

As declared by the Governor, the following Texas Counties, affected by Hurricane Rita are eligible to apply for funds. The Counties of Brazoria, Fort Bend, Hardin, Jefferson, Liberty, Montgomery, and Orange may apply for these funds; however, these counties may only assist households in cities/places that are not part of a PJ or a member of a consortium. The affected counties are located in Uniform State Service Regions 5 and 6.

1. Angelina
2. Brazoria
3. Chambers
4. Fort Bend
5. Galveston
6. Hardin
7. Harris
8. Jasper
9. Jefferson
10. Liberty
11. Montgomery
12. Nacogdoches
13. Newton
14. Orange
15. Polk
16. Sabine
17. San Augustine
18. San Jacinto
19. Shelby

20. Trinity

21. Tyler

22. Walker

Pursuant to the Regional Allocation Formula, the table below shows the allocation of funds to the Two Uniform State Service Regions and the corresponding rural and urban/ex-urban distribution within each region.

Table 1: Regional, Rural, and Urban/Ex-Urban Funding Amounts

Region	Place for Geographical Reference	Regional Funding Amount	Regional Funding %	Rural Funding Amount	Rural Funding %	Urban/Ex-Urban Funding Amount	Urban/Ex-Urban Funding %
5	Beaumont	$ 2,123,954.00	50.6%	$ 1,839,703.00	86.6%	$ 284,251.00	13.4%
6	Houston	$ 2,076,046.00	49.4%	$ 563,291.00	27.1%	$ 1,512,755.00	72.9%
TOTAL		**$ 4,200,000.00**	**100.0%**	**$ 2,402,994.00**		**$ 1,797,006.00**	

CONTRACT TERM

10 TAC §53.54(1)(A) has been waived by the Texas Department of Housing and Community Affairs' (TDHCA) governing board, therefore, the Contract period for the written agreement with the Department will be for 12 months.

MAXIMUM CONTRACT AMOUNTS

10 TAC §53.54(1) has been waived by the TDHCA Governing Board; therefore, the maximum award per contract under this NOFA is $500,000.

DESCRIPTION OF ACTIVITIES

Owner Occupied Housing Assistance (OCC), rehabilitation or reconstruction cost assistance, is provided to homeowners affected by Hurricane Rita for the repair or reconstruction of their existing home. The home must be the principal residence of the homeowner.

Assistance will be provided in the form of a grant for households whose income is at or below 30% of the Area Median Family Income (AMFI) as defined by HUD. Assistance will be in the form of a five year deferred forgivable loan, for households whose income is between 31% and 50% AMFI, as defined by HUD. Assistance will be in the form of a 0%, thirty-year repayable loan, for households whose income is between 51% and 80% AMFI, as defined by HUD.

At the completion of the assistance, all properties must meet all applicable codes and standards, as specified in the application guide. In addition, all housing that is reconstructed or rehabilitated with HOME funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances in accordance with 24 CFR §92.251(a). If a home is reconstructed, the applicant must also ensure compliance with the universal design features in new construction, established by §2306.514, Texas Government Code, required for any applicants utilizing federal or state funds administered by the Department for the construction of single family homes.

REVIEW OF APPLICATIONS

Applications will be accepted from 8:00 a.m. until 5:00 p.m., Monday through Friday, excluding federal and state holidays, on an on-going basis until such time as all funding has been committed, or Monday, September 11, 2006. Applications will be accepted, reviewed, and recommended to the Department's governing Board in accordance with the State of Texas HOME Program Rules, 10 TAC Chapter 53.

All applications for funds will be reviewed to ensure that the application meets all eligibility requirements. 10 TAC §53.59(b)(3) and §53.61 have been waived by the TDHCA Governing Board, therefore applications will not be competitively scored. Applications will be received on a first come first serve basis for each region and rural, and urban/ex-urban categories. Application deficiencies may be cleared through the application deficiency process. Applications will be selected on a first come, first served basis. Funding recommendations will be presented to the TDHCA Board of Directors for approval.

APPLICATION PROCEDURES, FINAL FILING

The HOME Application Guide will be available on the Department's website at *www.tdhca.state.tx.us* or you may call (512) 475-3993 to request an application copy. Applications must be on forms provided by the Department, and cannot be altered or modified and must be in final form before submitting them to the Department.

Applications mailed via the U.S. Postal Service *must* be mailed to:

Texas Department of Housing and Community Affairs

Single Family Finance Production Division

P.O. Box 13941

Austin, Texas 78711-3941

Applications mailed by private carrier or hand-delivered will be received at the physical address of:

Texas Department of Housing and Community Affairs

Single Family Finance Production Division

221 East 11th Street

Austin, Texas 78701

This NOFA does not include text of the various applicable regulatory provisions that may be important to the HOME Program. For proper completion of the application, the Department strongly encourages potential applicants to review the State and Federal regulations and to attend application training workshops.

APPLICATION WORKSHOPS

The Department will present one-day HOME Program Application Workshops that will provide an overview of the HOME Program, application preparation and submission, evaluation criteria and information about the major Federal and State requirements that may affect a HOME project. The HOME Application Workshop schedule and registration will be posted on the Department's website at *www.tdhca.state.tx.us*.

RESOLUTION REQUIREMENTS

The Department requires that all applications submitted must include an original resolution from the applicant's direct governing body authorizing the submission of the application.

AUDIT REQUIREMENTS

An applicant is not eligible to apply for funds or any other assistance from the Department unless a past audit or Audit Certification Form has been submitted to the Department in a satisfactory format on or before the application deadline for funds or other assistance per 10 TAC §1.3(b). This is a threshold requirement outlined in the application, therefore applications that have outstanding past audits will be disqualified. Staff will not recommend applications for funding to the Department's Governing Board unless all unresolved audit findings, questions or disallowed costs are resolved per 10 TAC §1.3(c).

TRD-200604005
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: August 2, 2006

♦ ♦ ♦

Rental Portfolio Hurricane Relief Program: Program Policy and Notice of Funding Availability

Housing Trust Fund Program

1) Policy

On October 3, 2005, the Governor of the State of Texas declared twenty-two (22) Texas counties to have been impacted by Hurricane Rita. These areas were also federally designated as disaster areas. The Texas Department of Housing and Community Affairs (the Department) is pleased to announce the availability through its Housing Trust Fund (HTF) of approximately $1,000,000. These funds will be used to finance the rehabilitation of qualified affordable housing developments in the Department's existing rental portfolio that received damage from Hurricane Rita on September 24, 2005, and have not received sufficient reimbursement from insurance payments to complete all necessary repairs. The Housing Trust Funds available through this Notice of Funding Availability (NOFA) will be awarded as loans to eligible multifamily rental developments that are currently covered by a Land Use Restriction Agreement (LURA) with the Department.

2) Allocation of Funds

This allocation of Housing Trust Funds is not subject to the Department's Regional Allocation Formula, pursuant to §2306.111(d) of the Texas Government Code. That formula has been adjusted to reflect the multifamily housing needs for those state service regions affected by Hurricane Rita and based on the Federal Emergency Management Agency's (FEMA) household needs calculations. Based on the adjusted formula, the Department will allocate 83% or approximately $830,000 to state service region 5 and 17% or approximately $170,000 to state service region 6. The Department will allow funds to be transferred between regions 5 and 6 if there are unused funds in either region.

3) Eligible Applicants

a) Eligible Applicants include only owners of developments in the Department's rental portfolio that were damaged by Hurricane Rita on September 24, 2005, and which meet all of the following criteria:

1) The Applicant was the owner of the development on or before September 24, 2005;

2) The development was damaged by Hurricane Rita, as determined by an insurance settlement statement;

3) Is located within state service regions 5 or 6 and within one of the twenty-two disaster declared counties

4) The development has an active LURA in place with the Texas Department of Housing and Community Affairs;

5) The development must have already received an insurance settlement statement detailing the amount and covered expenses paid for by the settlement; and

6) The final payment of insurance proceeds does not have to be complete at the time of application.

b) Furthermore, the Owner and Applicant must be the same party, and meet all of the eligibility requirements of §51.2(8) and §51.7(a)(1) of the Housing Trust Fund Rule, and all of the following requirements:

1) The Applicant is able to meet all credit and financial guarantee requirements of §1.32(f) of the Real Estate Analysis Rules and Guidelines;

2) The Applicant is not considered an Ineligible Applicant under §51.5(d) of the Housing Trust Fund Rule, and does not meet any of the following criteria:

(A) Previously funded recipient(s) whose Housing Trust Funds have been partially or fully deobligated due to failure to meet contractual obligations during the 12 months prior to the current funding cycle;

(B) Applicants who have not satisfied all threshold requirements described in the HTF Rule and this NOFA, and for which Administrative Deficiencies were unresolved, pursuant to §51.6(d) of the Housing Trust Fund Rule;

(C) Applicants who have submitted incomplete applications;

(D) Applicants that have been otherwise barred by the Department;

(E) Applicant or Developer or their staff who violate the state revolving door policy (Chapter 572 of the Texas Government Code); or

(F) Any applicant who would otherwise be considered ineligible under §50.5 of the 2006 QAP, excluding those requirements at §50.5(a)(5) - (8).

c) Pursuant to §51.5(e) of the Housing Trust Fund Rule, the Department will not recommend an application for funding if it includes a Principal who:

1) Is or has been barred, suspended, or terminated from procurement in a state or federal program and listed in the List of Parties Excluded from Federal Procurement of Non-procurement Programs;

2) Is or has been the subject of enforcement action under state or federal securities law or is the subject of an enforcement proceeding with a state or federal agency or another governmental entity;

3) Has unresolved compliance or audit findings related to previous or current funding agreements with the Department; or

4) Has breached a contract with a public agency.

4) Eligible Activities Pursuant to §2306.202 of the Texas Government Code, the Department may use Housing Trust Funds to assist local units of government, public housing authorities, nonprofit organizations and for-profit entities to rehabilitate decent, safe and sanitary housing. Under this NOFA, owners that have an existing development in the Department's rental portfolio may apply for funding to rehabilitate or repair damage to the development site caused by Hurricane Rita and were not covered or reimbursed by insurance or any other source of reimbursement. The maximum award amount will be limited to the lesser of $250,000, or an amount equal to a percentage of the total estimated damages that is equal to the percentage of units covered by the Department's LURA. For example, if 20% of the units in the development are covered by the Department's LURA and the total amount of damages from Hurricane Rita are $1,000,000, the maximum award would be

$200,000. Applicants may not add additional units, build new structures, or add amenities that were not in place prior to September 24, 2005. No developer fees or soft costs, with the exception of engineering, property condition assessments, and third party reports required for threshold criteria or closing documents, will be considered eligible activities or costs under this NOFA. The Department reserves the right to determine additional activities not eligible for funding at its own discretion.

5) Additional Threshold Criteria

a) To ensure that each applicant is prepared to complete repairs to eligible developments, and has the financial resources to repay the Department's loan, Applicants will be required to complete the following threshold criteria:

1) Approval of Permanent Lenders. Applicants must submit approval letters from all participating lenders and lien holders stating that additional liens by the Department may be placed against the development.

2) Status of Permanent Financing. Applicants must submit Estoppel letters from all permanent financing entities that certify that no default exists under the note and the mortgage and no event has occurred that, with notice or the passage of time or both, would constitute a default under the note and/or the mortgage for the development.

3) Ownership Agreements. Applicants must submit evidence of approval from all Persons, Parties and/or Partnerships that hold an ownership stake in the development that the Applicant may add additional debt to the development. This includes all General Partners, Limited Partners, Members of Partnerships and Special Limited Partners.

4) Credit Worthiness and Financial Statements. Applicants will be required to submit an Authorization to Release Financial Information and Financial Statement certification forms, as provided for in the application materials.

5) Previous Participation. Applicants will be required to submit executed Previous Participation and Background Certification and National Previous Participation and Background Certification forms, pursuant to §50.9(h)(9) of the 2006 Qualified Allocation Plan (QAP).

6) Projected Proformas and Operating Budgets. Applicants will submit current and projected operating proformas, rent schedules and current rent rolls to be used in the Department's analysis of the development's financial feasibility. Additionally, Applicants will submit financial statements certifying to the development's past twelve months of operating income and expenses.

7) Insurance Statement of Damage or PCA. Applicants must submit all final Insurance Settlement Statements from the development's Insurers. Preliminary settlement statements, adjustment statements or unsigned settlement agreements will not be acceptable. Applicants must submit a Property Condition Assessment which meets all of the Department's requirements, pursuant to §1.36 of the 2006 Real Estate Analysis Rules and Guidelines, for developments that were uninsured.

8) Construction/Rehab Budget. Applicants must submit a complete development cost schedule that itemizes all necessary repairs since September 24, 2005, what repairs were completed using insurance proceeds, and all repairs that were or will not be not funded with insurance proceeds.

9) Relocation. Pursuant to §2306.203(4) of the Texas Government Code, funds may not be made available to a development that permanently and involuntarily displaces individuals and families of low income. Applicants will be required to certify that no low-income families will be displaced as a result of the Application.

10) Length of Affordability. Applicants will be required to submit a copy of their current LURA and identify the length of remaining affordability. Applicants may be required to accept an extended use agreement, extend the term of their existing LURA or accept a new LURA, pursuant to §2306.185 and §2306.203(6) of the Texas Government Code.

11) Public Notifications. Applicants will be required to submit contact information for public officials. The Department will be responsible for providing public officials notification of application submission. For the purpose of this NOFA the Public Notification requirements of the Housing Trust Fund Rule, 10 TAC §51.6(j), have been waived by the Department's Board, pursuant to §51.11 of the Housing Trust Fund Rule.

12) Resolution Requirements. The Department requires that all applications submitted must include a resolution from the applicant's direct governing body (Board of Directors, Members of the General Partnership or Sole Proprietors) authorizing the submission of the application and detailing the correct signatory authority and title block for all contracts and commitments.

13) Audit Requirements. An applicant is not eligible to apply for funds or any other assistance from the Department unless audits are current or the Audit Certification Form has been submitted to the Department in a satisfactory format on or before the application submission date per 10 TAC §1.3(b). This is a threshold requirement outlined in the application, therefore, applications that have past due audits will be disqualified. Staff will not recommend applications for funding to the Department's Governing Board unless all unresolved audit findings, questioned or disallowed costs are resolved per 10 TAC §1.3(c).

14) Employment Opportunities. Pursuant to §51.8(a), in connection with the planning and carrying out of any project assisted under the Housing Trust Fund, to the greatest extent feasible, opportunities for training and employment shall be given to low, very low, and extremely low-income persons residing within the area in which the project is located. Applicants will certify to this in the application.

15) Conflict of Interest. Applicants will certify that no conflicts of interest are present or shall occur after the time of award, pursuant to §51.8(b) of the Housing Trust Fund Rule.

6) Selection Process

a) Pursuant to §2306.203 of the Texas Government Code, the criteria used to rank proposals will include:

1) Priority Damage. Applicants requesting funds to repair housing units that are not habitable at the time of Application submission will receive 10 points. Applicants requesting funds to repair housing units that are habitable but in need of repair at the time of Application submission will receive 5 points. Applicants will certify to this item.

2) Priority Areas. In an effort to focus more funding into areas impacted most by Hurricane Rita, developments located within the counties of Hardin, Jefferson and Orange will receive 10 points.

3) Developments located in High Needs Areas. Pursuant to §2306.203(5)(B), of the Texas Government Code, consideration of the number and percentage of income-qualified families in different geographical areas will be taken in the allocation of funds. Under this NOFA, Applicants will receive up to 7 points based on the Affordable Housing Needs Score (AHNS) for the place or location of the development site. The AHNS list will be provided in the application materials.

4) Leveraging of Federal Resources. Applicants will receive 5 points for providing evidence that the development has received Federal Financial assistance through FEMA, the Small Business Administration

or the Department of Homeland Security. Federal flood insurance is not to be considered federal financial assistance.

5) Cost-Effectiveness of a Proposed development. Applicants will receive 5 points for submitting a request for funding that does not exceed 30% of the total value of damage to the development, as calculated in the insurance settlement statement.

6) Very Low Income Targeting. Applicants will receive 5 points for developments that currently provide 50% or more of their housing to families or individuals earning 50% or less of the area medium income (AMI).

7) Developments in Rural Areas. Pursuant to §2306.203(5)(A) of the Texas Government Code, special emphasis will be placed on allocating funds to developments located in rural areas. Under this NOFA, developments located in rural areas, as defined by the Departments Housing Needs Characteristics list, will receive 5 points.

b) The maximum score possible is 47 points. Applicants with the greatest percentage of damage (i.e. total cost of damage divided by assessed value of the development) will be given priority over equally scored Applications if a tie breaker is necessary to determine awardees.

7) Review Process

a) All applications must be received by the Department by 5:00 p.m. on August 28, 2006, regardless of method of delivery. Applications will be accepted, reviewed, and recommended to the Department's Board in accordance with the process outlined in this NOFA and pursuant to §51.6 of the Housing Trust Fund Rule.

b) Applicants must submit a complete application to be considered for funding, along with an application fee of $500.00. Texas Government Code requires the Department to waive application fees for nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services. These organizations must include proof of their exempt status and a description of their supportive services in lieu of the application fee.

c) Applications containing false information will be disqualified. Applications must be on forms provided by the Department and cannot be altered or modified and must be in final form before submitting them to the Department.

d) Applications must comply with §§2306.201 - 2306.203 of the Texas Government Code, the Housing Trust Fund Rules at 10 TAC Chapter 51, this NOFA and all other applicable regulations and statutes. Applications that satisfy the eligibility criteria and threshold criteria will then be evaluated for material noncompliance, and scored according to the selection criteria outlined in this NOFA. A brief analysis of the development's financial feasibility will be conducted only for those applications that will be recommended for an award.

e) The Department may decline to consider any application if the proposed activities do not, in the Department's sole determination, represent a prudent use of the Department's funds. The Department is not obligated to proceed with any action pertaining to any applications which are received and may decide that it is in the Department's best interest to refrain from pursuing any selection process. The Department strives, through its loan terms, to securitize its funding while ensuring the financial feasibility of a development. The Department reserves the right to negotiate individual elements of any application or award.

f) An Applicant may appeal decisions made by staff in accordance with 10 TAC §1.7 and §1.8.

g) Applicants should contact the following staff persons for additional information on this program:

Audrey Martin, Housing Specialist

Phone: (512) 475-3872

Email: audrey.martin@tdhca.state.tx.us

Or

David Danenfelzer, Multifamily Housing Administrator

Phone: (512) 475-3865

Email: david.danenfelzer@tdhca.state.tx.us

8) Awards and Closing Process

a) Awards for the Hurricane Damage Program will be made by the Department's Board no later than September 30, 2006 (Subsequent to the Board's approval of this policy, the September 2006 board meeting was canceled. Awards will be made at first available meeting proceeding September 30, 2006.). Once awards have been made by the Board, the Department will issue loan commitments. Commitments will detail the rates and terms of loan agreements, and all due diligence materials required to complete loan closings. Applicants will be required to submit all due diligence materials prior to the preparation of closing documents and in accordance with §51.8(c) - (f) and §51.10 of the Housing Trust Fund Rule. At a minimum, Applicants will be required to submit all of the following documentation to complete the Department's loan closing process:

1) Mortgagee Title Commitment;

2) Notes and Deeds of Trust;

3) Current Property Survey;

4) Evidence of Compliance with Local Zoning Ordinances;

5) Organizational Chart;

6) Bylaws, Articles of Incorporation, and Certificate of Filing Status with the Texas Secretary of State;

7) Texas Comptroller's Certificate of Good Standing;

8) Development Team Contact Information;

9) Proof of Corporate or Partnership Agreements filed with Texas Secretary of State;

10) Borrower Resolution naming the person and their title authorized to sign the TDHCA loan documents;

11) Borrower's Property and Casualty Insurance, General Public Liability Insurance, Builder's Risk Insurance (if applicable) and Worker's Compensation Insurance Certificate;

12) Texas Application for Payee ID#, Direct Deposit Form, and TDHCA Contract System Access Request Form;

13) Final Budget with Sources and Uses;

14) Supporting documentation proving fulfillment of all underwriting requirements noted in the Commitment Letter prior to TDHCA loan closing; and

15) Any other document the Department deems necessary to complete the closing process.

b) Furthermore, Applicants should note that all awardees must abide by the Housing Trust Fund Rules relating to records to be maintained and compliance review procedures detailed at §51.10 and Chapter 60 of Title 10 of the Texas Administrative Code.

9) Application Acceptance Application materials must be organized and submitted in the manner detailed in the application manual. Applicants must submit one complete printed copy of all application materials and one complete scanned copy of the application materials. All

scanned copies must be scanned in accordance with the guidance provided in the application manual.

Applications must be sent to:

Multifamily Finance Production Division

Texas Department of Housing and Community Affairs

221 East 11th Street

Austin, TX 78701-2410

Or via the U.S. Postal Service to:

Multifamily Finance Production Division

Texas Department of Housing and Community Affairs

Post Office Box 13941

Austin, TX 78711-3941

NOTE: This NOFA does not include the text of the various applicable regulatory provisions that may be important to the Housing Trust Fund. For proper completion of the application, the Department strongly encourages potential applicants to review 10 TAC Chapters 50 and 51, and Chapter 2306 of the Texas Government Code. These regulatory provisions may be found on the TDHCA website at http://tdhca.state.tx.us/, under "TDHCA Governing Statute (PDF)" and "TDHCA Rules (TAC)."

TRD-200604012
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: August 2, 2006

♦ ♦ ♦

Texas Department of Insurance

Third Party Administrator Applications

The following third party administrator (TPA) application has been filed with the Texas Department of Insurance and is under consideration.

Application for admission to Texas of Meritain Health, Inc., a foreign third party administrator. The home office is AMHERST, NEW YORK.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200604008
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: August 2, 2006

♦ ♦ ♦

Texas Lottery Commission

Instant Game Number 730 "Magnificent 7's"

1.0 Name and Style of Game.

A. The name of Instant Game No. 730 is "MAGNIFICENT 7'S". The play style for Game 1 is "key number match with auto win". The play style for Game 2 is "three in a line with doubler". The play style for Game 3 is "match 3 of 6 with doubler". The play style for Game 4 is "key symbol match". The play style for ADD UP is "add up".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 730 shall be $7.00 per ticket.

1.2 Definitions in Instant Game No. 730.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: $7.00, $14.00, $21.00, $35.00, $70.00, $350, $700, $7,000, $75,000, 01, 02, 03, 04, 05, 06, 08, 09, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, 7 SYMBOL, 1 SYMBOL, 2 SYMBOL, 3 SYMBOL, 4 SYMBOL, 5 SYMBOL, 6 SYMBOL, 8 SYMBOL, 9 SYMBOL, $$ SYMBOL, CACTUS SYMBOL, BRANDING IRON SYMBOL, BLAZING SUN SYMBOL, MAP SCROLL SYMBOL, STACK OF CASH SYMBOL, COWBOY BOOT SYMBOL, GOLD COIN SYMBOL, COVERED WAGON SYMBOL, SPURS SYMBOL, LASSO SYMBOL, COWBOY HAT SYMBOL, 1, 2, 3, 4, 5 or 6.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 730 - 1.2D

PLAY SYMBOL	CAPTION
$7.00	SEVEN$
$14.00	FOURTEEN
$21.00	TWY ONE
$35.00	THY FIV
$70.00	SVTY
$350	THR FTY
$700	SVN HUN
$7,000	SVN THOU
$75,000	75 THOU
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FON
15	FTN
16	SXT
18	EGN
19	NTN
20	TWY
21	TNE
22	TTW
23	TTH
24	TFR
25	TFV
26	TSX
28	TEI
29	TNI
30	THY
7 SYMBOL	WIN
1 SYMBOL	
2 SYMBOL	
3 SYMBOL	
4 SYMBOL	
5 SYMBOL	
6 SYMBOL	
8 SYMBOL	
9 SYMBOL	
$$ SYMBOL	

CACTUS SYMBOL	CACTUS
BRANDING IRON SYMBOL	IRON
BLAZING SUN SYMBOL	SUN
MAP SCROLL SYMBOL	MAP
STACK OF CASH SYMBOL	CASH
COWBOY BOOT SYMBOL	BOOT
GOLD COIN SYMBOL	COIN
COVERED WAGON SYMBOL	WAGON
SPURS SYMBOL	SPURS
LASSO SYMBOL	LASSO
COWBOY HAT SYMBOL	HAT
1	ONE
2	TWO
3	THREE
4	FOUR
5	FIVE
6	SIX

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 730 - 1.2E

CODE	PRIZE
SVN	$7.00
FRN	$14.00
TWE	$21.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $7.00, $14.00 or $21.00.

H. Mid-Tier Prize - A prize of $35.00, $70.00 or $350.

I. High-Tier Prize - A prize of $700, $7,000 or $75,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (730), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 730-0000001-001.

L. Pack - A pack of "MAGNIFICENT 7'S" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the pack; the back of ticket 075 will be revealed on the back of the pack. All packs will be tightly shrink-wrapped. There will be no breaks between the tickets in a pack. Every other book will reverse i.e., reverse order will be: the back of ticket 001 will be shown on the front of the pack and the front of ticket 075 will be shown on the back of the pack.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "MAGNIFICENT 7'S" Instant Game No. 730 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "MAGNIFICENT 7'S" Instant Game is determined once the latex on the ticket is scratched off to expose 35 (thirty-five) Play Symbols. For Game 1, if a player matches either of YOUR NUMBERS play symbols to the LUCKY NUMBER play symbol, the player wins the PRIZE shown below that number(s). If a player reveals a "7" play symbol, the player wins PRIZE shown instantly. For Game 2, if a player reveals 3 (three) "7"s in any one row, column or diagonal, the player wins the PRIZE shown. If a player reveals a "$$" play sym-

bol, the player wins DOUBLE PRIZE shown instantly. For Game 3, if a player reveals 3 (three) matching prize amounts, the player wins that amount. If a player reveals 2 (two) matching prize amounts plus a "moneybag" play symbol, the player wins DOUBLE that amount. For Game 4, if a player matches any of YOUR SYMBOLS play symbols to either WINNING SYMBOL play symbol, the player wins the PRIZE shown below that symbol(s). For Game ADD UP, the player scratches the entire area and if the 2 (two) numbers revealed total "7", the player wins $70 instantly. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 35 (thirty-five) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 35 (thirty-five) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 35 (thirty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 35 (thirty-five) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets within a book will not have identical patterns.

B. GAME 1: This play area consists of two (2) YOUR NUMBERS and one (1) LUCKY NUMBER.

C. GAME 1: Players can win twice in this play area.

D. GAME 1: The "7" symbol will never appear as a LUCKY NUMBER.

E. GAME 1: Non-winning tickets will not contain two (2) identical YOUR NUMBERS.

F. GAME 1: Non-winning prize symbols will always be unique.

G. GAME 1: A winning prize symbol will never be the same as a non-winning prize symbols within this play area.

H. GAME 1: Non-winning tickets will never contain the "7" symbol.

I. GAME 2: Players can win once in this play area.

J. GAME 2: No ticket will contain three (3) or more of a kind other than the "7" symbol.

K. GAME 2: The "$$" symbol and three (3) "7" symbols cannot appear in the same game.

L. GAME 2: Tickets will not contain four (4) "7" symbols in all 4 corners.

M. GAME 2: The "$$" symbol will win 2 times the prize amount shown and will win as per the prize structure.

N. GAME 2: On winning tickets, wins should appear equally among the 3 types of wins (row, column, diagonal).

O. GAME 3: Players can win once in this play area.

P. GAME 3: There will never be more than one (1) set of three (3) matching prize amounts on a single ticket.

Q. GAME 3: There will never be more than three (3) matching prize amounts on a single ticket.

R. GAME 3: On winning tickets, two (2) matching symbols and the "moneybag" symbol will win 2 times the prize amount shown and will win as per the prize structure.

S. GAME 3: There will never be more than one (1) "moneybag" symbol per ticket.

T. GAME 3: On non-winning tickets, the "moneybag" symbol may appear when all symbols are unique.

U. GAME 3: The "moneybag" symbol will never appear on a ticket which contains three (3) matching Play symbols.

V. GAME 3: No more than two pairs of matching play symbols will appear on a ticket which does not contain a "moneybag" symbol.

W. GAME 3: No more than one pair of matching play symbols will appear on a ticket containing a "moneybag" symbol.

X. GAME 4: Players can win up to five (5) times in this play area.

Y. GAME 4: No more than two (2) matching non-winning prize symbols on a ticket.

Z. GAME 4: No more than two (2) matching non-winning YOUR SYMBOLS on a ticket.

AA. GAME 4: Non-winning prize symbols will not match a winning prize symbol on a ticket.

BB. GAME 4: No duplicate WINNING SYMBOLS will appear on a ticket.

CC. ADD-UP: Players can win once in this play area.

DD. ADD-UP: On winning tickets, the two numbers in this play area will total"7".

EE. ADD-UP: The two symbols on non-winning games will never total "7" in this play area.

FF. ADD-UP: Winning tickets will win per the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "MAGNIFICENT 7'S" Instant Game prize of $7.00, $14.00, $21.00, $35.00, $70.00 or $350, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $35.00, $70.00 or $350 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "MAGNIFICENT 7'S" Instant Game prize of $700, $7,000 or $75,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "MAGNIFICENT 7'S" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "MAGNIFICENT 7'S" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "MAGNIFICENT 7'S" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 5,040,000 tickets in the Instant Game No. 730. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 730 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$7	655,200	7.69
$14	520,800	9.68
$21	151,200	33.33
$35	60,900	82.76
$70	52,584	95.85
$350	6,300	800.00
$700	336	15,000.00
$7,000	12	420,000.00
$75,000	8	630,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.48. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 730 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 730, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200604003
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: August 2, 2006

♦ ♦ ♦

Instant Game Number 740 "Wild Doubler"

1.0 Name and Style of Game.

A. The name of Instant Game No. 740 is "WILD DOUBLER". The play style is "key number match with doubler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 740 shall be $1.00 per ticket.

1.2 Definitions in Instant Game No. 740.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, WILD SYMBOL, $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, $100, $500 or $1,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 740 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
WILD SYMBOL	DBL
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUND
$500	FIV HUND
$1,000	ONE THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 740 - 1.2E

CODE	PRIZE
ONE	$1.00
TWO	$2.00
FOR	$4.00
FIV	$5.00
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $1.00, $2.00, $4.00, $5.00, $10.00 or $20.00.

H. Mid-Tier Prize - A prize of $50.00, $100 or $500.

I. High-Tier Prize - A prize of $1,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (740), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 250 within each pack. The format will be: 740-0000001-001.

L. Pack - A pack of "WILD DOUBLER" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005will be on the top page; tickets 006 and 010 on the next page; etc.; and tickets 246 and 250 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of ticket 001 and 010 will be exposed.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "WILD DOUBLER" Instant Game No. 740 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "WILD DOUBLER" Instant Game is determined once the latex on the ticket is scratched off to expose 11 (eleven) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to the WINNING NUMBER play symbol, the player wins the prize shown for that number. If a player reveals a "WILD" play symbol, the player wins DOUBLE the prize shown for that symbol. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 11 (eleven) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 11 (eleven) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 11 (eleven) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 11 (eleven) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another un-

played ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No duplicate non-winning prize symbols.

C. No duplicate non-winning play symbols.

D. A non-winning prize symbol will never be the same as the winning prize symbol (s).

E. The "WILD" symbol will appear according to the prize structure and will only appear once on a ticket.

F. No prize amount in a non-winning spot will correspond with the YOUR NUMBER play symbol (i.e. 5 and $5).

2.3 Procedure for Claiming Prizes.

A. To claim a "WILD DOUBLER" Instant Game prize of $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, $100 or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $50.00, $100 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "WILD DOUBLER" Instant Game prize of $1,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "WILD DOUBLER" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "WILD DOUBLER" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "WILD DOUBLER" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 12,000,000 tickets in the Instant Game No. 740. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 740 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$1	1,392,000	8.62
$2	720,000	16.67
$4	144,000	83.33
$5	96,000	125.00
$10	108,000	111.11
$20	72,000	166.67
$50	10,750	1,116.28
$100	2,000	6,000.00
$500	22	545,454.55
$1,000	44	272,727.27

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.72. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 740 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 740, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200604004
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: August 2, 2006

♦ ♦ ♦

Instant Game Number 832 "Scratchman Returns"

1.0 Name and Style of Game.

A. The name of Instant Game No. 832 is "SCRATCHMAN RETURNS". The play style is "match 3 of 9".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 832 shall be $1.00 per ticket.

1.2 Definitions in Instant Game No. 832.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, $100 or $1,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 832 - 1.2D

PLAY SYMBOL	CAPTION
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUND
$1,000	ONE THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 832 - 1.2E

CODE	PRIZE
ONE	$1.00
TWO	$2.00
FOR	$4.00
FIV	$5.00
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $1.00, $2.00, $4.00, $5.00, $10.00 or $20.00.

H. Mid-Tier Prize - A prize of $50.00 or $100.

I. High-Tier Prize - A prize of $1,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (832), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 250 within each pack. The format will be: 832-0000001-001.

L. Pack - A pack of "SCRATCHMAN RETURNS" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fan-folded in pages of five (5). Tickets 001 to 005 will be on the top page; tickets 006 to 010 on the next page; etc.; and tickets 246 to 250 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of ticket 001 and 010 will be exposed.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "SCRATCHMAN RETURNS" Instant Game No. 832 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "SCRATCHMAN RETURNS" Instant Game is determined once the latex on the ticket is scratched off to expose 9 (nine) Play Symbols. If a player scratches the play area and reveals 3 (three) matching amounts play symbols, the player wins that amount. No por-

tion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 9 (nine) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 9 (nine) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 9 (nine) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 9 (nine) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No four or more matching play symbols on a ticket.

C. No more than 2 pairs of matching play symbols on a ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "SCRATCHMAN RETURNS" Instant Game prize of $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $50.00 or $100, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $50.00 or $100 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "SCRATCHMAN RETURNS" Instant Game prize of $1,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "SCRATCHMAN RETURNS" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "SCRATCHMAN RETURNS" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "SCRATCHMAN RETURNS" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 12,000,000 tickets in the Instant Game No. 832. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 832 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$1	1,296,000	9.26
$2	576,000	20.83
$4	384,000	31.25
$5	96,000	125.00
$10	72,000	166.67
$20	48,000	250.00
$50	11,100	1,081.08
$100	2,500	4,800.00
$1,000	250	48,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.83. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 832 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 832, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200603985
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: July 31, 2006

♦ ♦ ♦

Public Utility Commission of Texas

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on July 25, 2006, to amend a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Project Title and Number: Application of Marcus Cable Associates, L.L.C., doing business as Charter Communications, to Amend its State-Issued Certificate of Franchise Authority, Project Number 32986 before the Public Utility Commission of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 32986.

TRD-200603963
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 28, 2006

♦ ♦ ♦

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on July 27, 2006, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Project Title and Number: Application of Rapid Acquisition Company, LLC to Amend its State-Issued Certificate of Franchise Authority, Project Number 32993 before the Public Utility Commission of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 32993.

TRD-200603992
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 1, 2006

♦ ♦ ♦

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on July 28, 2006, to amend a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Project Title and Number: Application of Time Warner Entertainment-Advance/Newhouse Partnership d/b/a Time Warner Cable to Amend its State-Issued Certificate of Franchise Authority, Project Number 33001 before the Public Utility Commission of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 33001.

TRD-200603993
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 1, 2006

♦ ♦ ♦

Notice of Proceeding for 2006 Annual State Certification for Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds

Notice is given to the public of the 2006 annual certification proceeding initiated by the Public Utility Commission of Texas for state certification of common carriers as eligible telecommunications carriers (ETC) to receive federal universal service funds (FUSF).

Docket Title and Number: Designation of Common Carriers as Eligible Telecommunications Carriers (ETC) to Receive Federal Universal Service Funds Pursuant to the Federal Communications Commission's Fourteenth Report and Order Adopting a State Certification Process. Docket Number 24481.

The Public Utility Commission of Texas (commission) initiated this proceeding in response to the Federal Communications Commission's (FCC) Fourteenth Report and Order adopting a state certification process. Under Section 254(e) of the Federal Telecommunications Act (FTA) carriers must use federal universal service support "only for the provision, maintenance, and upgrading of facilities and services for which the support was intended." The FCC concluded that it is appropriate for the state to certify that all federal high-cost funds flowing to rural carriers within the state of Texas are being used in a manner consistent with FTA §254(e). The commission is required to file such annual certification with the FCC and the Universal Service Administrative Company (USAC) on or before October 1 of each year.

Absent such certification, carriers will not receive federal universal service support.

The certification requirement is applicable to all rural carriers and competitive eligible telecommunications carriers seeking high-cost support in the service area of a rural local exchange carrier that the state commission certifies as eligible to receive federal high-cost support during that annual period. In accordance with P.U.C. Substantive Rule §26.418(j), carriers shall certify directly to the commission in the form of a sworn affidavit executed by a corporate officer which certifies that the carrier is complying with the federal requirements for the receipt of FUSF support. All carriers within the state of Texas that request certification by the commission shall submit an affidavit on or before September 1st of each year.

Therefore, on or before September 1, 2006, carriers seeking to be certified should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll-free at 1-800-735-2989. Persons contacting the commission regarding this certification proceeding should refer to Docket Number 24481.

TRD-200603994
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 1, 2006

♦ ♦ ♦

Railroad Commission of Texas

Request for Comments on the Report of the Natural Gas Pipeline Competition Study Advisory Committee

(Editor's Note: In accordance with Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," Figure 1 and Figure 2 are not included in the print version of the Texas Register. The Figures are available in the on-line edition of the August 11, 2006, issue of the Texas Register.)

The Railroad Commission of Texas invites comments concerning the Report of the Natural Gas Pipeline Competition Study Advisory Committee (Figure 1), which includes the draft informal complaint procedure rule (Figure 2).

Figure 1

Figure 2

Comments on the report, including the draft informal complaint procedure rule, may be submitted by mail to: Danny Bivens, Gas Services Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; by e-mail to danny.bivens@rrc.state.tx.us; or by fax to (512) 463-7962. The Commission will accept comments on the report until September 1, 2006, at 5:00 p.m. The Commission encourages all interested persons to submit comments no later than this deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Mr. Bivens at (512) 475-1958.

Issued in Austin, Texas, on July 31, 2006.

TRD-200603984
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Filed: July 31, 2006

♦ ♦ ♦

Texas Residential Construction Commission

Notice of Applications for Designation as a "Texas Star Builder"

The commission adopted rules regarding the procedures for designation as a "Texas Star Builder" at 10 TAC §303.300. The rules were adopted pursuant to §416.011, Property Code (Act effective Sept. 1, 2003), which provides that the commission shall establish rules and procedures through which a builder can be designated as a "Texas Star Builder." The commission rules for application for designation can be found on the commission's website at www.trcc.state.tx.us

10 TAC §303.300(i)(2) requires the commission to publish in the *Texas Register* notice of the application of each person seeking to become designated as a "Texas Star Builder" registered under this subchapter. The commission will accept public comment on each application for twenty-one (21) days after the date of publication of the notice. Information provided in response to this notice will be utilized in evaluating the applicants for approval. The Texas Star Builder designation requires that a builder or remodeler demonstrate that its education, experience and commitment to professionalism sets the builder or remodeler apart from its peers and offers some assurance to its customers that its quality of service and construction will be above average.

Pursuant to 10 TAC §303.300(i)(2) the commission hereby notices the application(s) for designation as a "Texas Star Builder" of:

Identity Homes Construction Management, L.L.C., 207 Morton Street, Richmond, Texas 77469.

Identity Homes Construction Management, L.L.C., holds TRCC builder registration # 1441. The applicant's primary designated agent is Scott Lease.

Interested persons may send written comments regarding this application to Susan K. Durso, General Counsel, The Texas Residential Construction Commission, P.O. Box 13144, Austin, TX 78711-3144. Comments regarding this application will be accepted for twenty-one days following the date of publication of this notice in the *Texas Register*. Thereafter, the comments will not be considered as timely filed.

TRD-200604009
Susan K. Durso
General Counsel
Texas Residential Construction Commission
Filed: August 2, 2006

♦ ♦ ♦

Stephen F. Austin State University

Notice of Consultant Contract Availability

Stephen F. Austin State University, Nacogdoches, Texas, requests proposals from archeologists.

PURPOSE: Stephen F. Austin State University's archeology repository houses an important and varied collection. Artifacts include Caddoan ceramics and historical pieces from the early European settlement of Nacogdoches. Most of this collection is held in trust for either the Texas Historical Commission or the Caddo Nation of Oklahoma (in accordance with NAGPRA). In addition, the laboratory contains unprocessed materials from past archeological excavations that require processing, inventorying, and reporting to meet our commitments to the Texas Archeological Society and the Texas Historical Commission. In order to meet these needs as well as state curatorial requirements, the laboratory requires the attention of a contract archeologist.

REQUIREMENTS: The University is looking for someone to assess the current condition of our held in trust artifacts, to make changes to the facility as required to meet state standards, to negotiate letters of understanding between all stakeholders (The Caddo Nation, The Texas Historical Commission, the State Archeological Society, etc.), and to prepare a plan of action for future compliance activities.

DEADLINES: Proposals and/or resumes must be received in the office of Dr. Jerry Williams, Stephen F. Austin State University, P. O. Box 13047, Nacogdoches, Texas 75962 by 5:00pm, August 15, 2006, in order to be considered.

TRD-200603947
R. Yvette Clark
General Counsel
Stephen F. Austin State University
Filed: July 26, 2006

♦ ♦ ♦

Texas A&M University, Board of Regents

Consultant Contract Award

In compliance with the provisions of Chapter 2254, Subchapter B, Texas Government Code, The Texas A&M University System furnishes this notice of consultant contract award. A notice for request for proposals was filed in the March 17, 2006 issue of the *Texas Register* (31 TexReg 2331).

The consultant will provide evaluation services of the maintenance and custodial operations of the University Apartments (including the Community Center and Maintenance Building) located on the main campus of Texas A&M.

The consultant contract was awarded to Facility Engineering Associates, P.C., 11001 Lee Highway, Suite D, Fairfax, VA 22030-5018. Total value of the contact is $55,700.00. Beginning and ending dates of the contract are June 28, 2006 through September 2006.

The consultant shall submit a preliminary written report to the Agreement Administrator on or about August 19, 2006. After making any requested modifications the consultant will submit copies of final report.

Consultant shall also present findings and recommendations in a formal on-campus presentation to University Administration. On site presentation to be coordinated with Residence Life. Possible date of first week in September.

TRD-200604011
Vickie Burt Spillers
Executive Secretary to the Board
Texas A&M University, Board of Regents
Filed: August 2, 2006

♦ ♦ ♦

Request for Proposal (RFP 06-0025)

Texas A&M University is accepting proposals and intends to enter into an Agreement with a Consultant to conduct an independent review of employee relations and quality of work life issues in the Physical Plant Department at the College Station campus. The project deliverables shall include a detailed assessment report with specific recommendations. The report will identify strengths and opportunities for improvement, making specific suggestions for the implementation of best practices to enhance the quality of work life in the Department. Recognizing that job satisfaction has a direct link to job performance, recommendations focused on improving quality of life in the workplace will also put a high priority on ways to increase productivity in the workplace.

Information may be obtained by contacting:

Jeff Zimmermann, A.P.P.

Senior Buyer

Department of Strategic Sourcing and Purchasing Services

Texas A&M University

P.O. Box 30013

College Station, Texas 77842-301; or

e-mail at j-zimmermann@tamu.edu

Selection criteria will include methodology, competence, experience, knowledge, references, qualifications, and reasonableness of price. Proposals must be received on or before 2:00 p.m. central time on August 31, 2006.

TRD-200604010
Vickie Burt Spillers
Executive Secretary to the Board
Texas A&M University, Board of Regents
Filed: August 2, 2006

♦ ♦ ♦

Texas Department of Transportation

Notice of Intent

Pursuant to Title 43, Texas Administrative Code, §2.43(c)(8), the Texas Department of Transportation (TxDOT) is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for a proposed highway project in Smith County, Texas.

TxDOT, in cooperation with the Federal Highway Administration (FHWA), will prepare an EIS for a proposal to construct a proposed Lindale Reliever Route (LRR) in Smith County, Texas. The proposed improvement would involve construction of a new location roadway from the planned Loop 49 West/IH 20 interchange to connect with the existing US 69 north of the City of Lindale, a roadway distance of approximately 5-6 miles.

The need for the proposed improvements is based on safety, mobility, connectivity, and capacity issues. US 69 is designated as a Texas Trunk System roadway, and the reliever route would serve as an extension of Loop 49 between the IH 20/Loop 49 West interchange and US 69. The purpose of the proposed improvements is to address these needs and to serve the traveling public. Alternatives under consideration include (1) taking no action; and (2) constructing a proposed US 69 Lindale Reliever Route/Loop 49 North facility built to current highway standards. The proposed facility will be evaluated as a toll road project. A Feasibility Study prepared in 2001 evaluated four corridor alternatives along new location right-of-way and a No-Build alternative, resulting in the identification of a recommended study corridor. Subsequent public involvement opportunities have identified an additional study corridor. A reasonable number of alignment alternatives have been identified and evaluated. Evaluation of these alternatives, as well as the No-Build Alternative, will be documented in the EIS, based on input from federal, state, and local agencies, as well as private organizations and concerned citizens.

The EIS will evaluate potential impacts from construction and operation of the proposed roadway including, but not limited to the following: impacts to residences and businesses, including potential relocations; transportation impacts (construction detours, construction traffic,

and mobility improvement); air and noise impacts from construction equipment and operation of the roadway; social and economic impacts; impacts to cultural resources; water quality impacts from construction and roadway runoff; indirect and cumulative impacts; impacts related to tolling; and impacts to waters of the U.S. including wetlands from right-of-way encroachment.

A letter that describes the proposed action and a request for comments will be sent to appropriate federal, state, and local agencies, and to private organizations and citizens who have previously expressed interest in the proposal. TxDOT completed a Feasibility Study for the project in May 2001. In conjunction with the Feasibility Study, TxDOT developed a steering committee, provided project information at two public meetings, and met with interested stakeholders. It is anticipated that an agency scoping meeting will be held by TxDOT in September 2006 to coordinate and solicit agency representatives? input on project plans including the purpose, need, and range of alternatives, introduce project team members, obtain comments pertaining to the scope of the EIS, identify important issues, set goals, develop project schedule, and respond to questions. A continuing public involvement program will include a project mailing list, project newsletters, a public scoping meeting (public notice will be given of the time and place), and numerous informal meetings with interested citizens and stakeholders. In addition, a public hearing will be held after the publication of the Draft EIS. Public notice will be given of the time and place of the hearing. The Draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties.

Agency Contact: Comments or questions concerning this proposed action and the EIS should be directed to Ms. Dianna Noble, P.E., Director, Environmental Affairs Division, Texas Department of Transportation, 125 E. 11th Street, Austin, Texas 78701-2483, (512) 416-3001.

TRD-200603986
Bob Jackson
Interim General Counsel
Texas Department of Transportation
Filed: August 1, 2006

♦ ♦ ♦

Request for Proposal - Outside Counsel

The Texas Department of Transportation (the "department") requests proposals from law firms interested in representing the department in environmental law matters. This request for proposals (RFP) is issued for the purpose of identifying qualified law firms able to provide legal representation required by the department and the Texas Transportation Commission (the "commission") on legal matters related to compliance with environmental laws, regulations, and rules, both state and federal, affecting the department, and as more fully set out as follows. Selection of outside counsel will be made by the department's General Counsel. The Office of the Attorney General must approve the General Counsel's selection before the selected outside counsel may be employed.

Description: The department is a state agency that has the primary responsibility in Texas of constructing, operating, and maintaining a state transportation system. In connection with that responsibility, the department must deal with various environmental matters. These matters include, but are not limited to: obtaining appropriate permits; answering queries and complaints from state and federal regulatory authorities; complying with environmental laws, rules, and regulations, both state and federal, on an ongoing basis; appearing before administrative and judicial tribunals, both state and federal, to answer charges of a civil and criminal nature, both state and federal; and generally complying with state and federal laws, rules, and regulations applicable to the responsibilities discharged by a state department of transportation. The department intends to engage outside counsel to represent the department in these matters. In particular, the department intends to rely on outside counsel to represent the department in criminal cases related to these matters. Accordingly, the department invites responses to this RFP from firms that are qualified to perform these legal services. Firms must have considerable prior experience with, as well as extensive knowledge of, these subjects. The firm should be experienced in the matter of criminal defense work involving alleged violations of both state and federal environmental laws, rules, and regulations.

Responses: Responses to the RFP may be submitted by an individual law firm, attorney, or joint venture between two or more law firms and/or attorneys. Responses to the RFP should include at least the following information: (1) a description of the firm's qualifications for performing legal work in the matters described previously, the names, experience, education, and expertise of the attorneys who will be assigned to work on such matters, the availability of the lead attorney and other firm personnel who will be assigned to work on these matters, and appropriate information regarding efforts made by the firm to encourage and develop the participation of minorities and women in the provision of these legal services; (2) information relative to the capabilities, location(s), and resources of the firm's offices which might serve the department's requirements, including a summary of physical resources that would be assigned to the department, and an organizational chart indicating the relevant areas of responsibility of each attorney assigned to work on these matters; (3) the submission of fee information (either in the form of hourly rates for each attorney and paralegal who will be assigned to perform services in relation to these matters, comprehensive flat fees, or other fee arrangements directly related to the achievement of specific goals and cost controls) and billable expenses; (4) an abstract of the firm's cost control procedures and how it charges for its services; (5) a comprehensive description of the procedures used by the firm to supervise the provision of legal services in a timely and cost effective manner; (6) disclosures of conflicts of interest (identifying each and every matter in which the firm has, within the past calendar year, represented any entity or individual with an interest adverse to the Texas Department of Transportation, or to the state of Texas or any of its boards, agencies, commissions, universities, or elected or appointed officials); and (7) confirmation of willingness to comply with the rules, policies, directives, and guidelines of the department, the commission, and the Attorney General of the state of Texas.

Note: The department is particularly concerned with issues of any conflict of interest. Respondents are admonished to make all practicable efforts to fully investigate, disclose, and address such conflicts.

Format and Person to Contact: Two copies of the proposal are requested. The proposal should be typed, preferably double spaced, on 8 1/2 by 11 inch paper with all pages sequentially numbered, and either stapled or bound together. It should be sent by mail or delivered in person, marked "Response to Request for Proposal" and addressed to General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. For questions, telephone the Office of General Counsel at (512) 463-8630.

Deadline for Submission of Response: All proposals must be received by the Texas Department of Transportation at the previously stated address no later than 5:00 p.m., on September 11, 2006.

TRD-200603987

Bob Jackson
Interim General Counsel
Texas Department of Transportation
Filed: August 1, 2006

♦ ♦ ♦

The University of Texas System

Protest Procedures

BACKGROUND AND PURPOSE

The University of Texas System proposes Series 22602 of The University of Texas Administrative Rules to implement uniform System-wide protest procedures in connection with the procurement of goods and services in accordance with Texas Government Code §2155.076.

STATUTORY AUTHORITY

These rules are proposed under Texas Education Code §65.31(c) which authorizes the Board of Regents of The University of Texas System (Board) to promulgate and enforce rules and regulations for the operation, control, and management of The University of Texas System and its institutions as the Board deems necessary and desirable.

LEGAL CERTIFICATION

Dana Hollingsworth, Attorney, certifies that the proposed rules have been reviewed by University's legal counsel and found to be within the University's authority to adopt.

PUBLIC COMMENT

Comments on the proposal may be directed to Dana Hollingsworth, Attorney, Office of General Counsel, The University of Texas System, 201 West 7th Street, Austin, Texas 78701, dhollingsworth@utsystem.edu, (512) 499-4523. Comments will be accepted for 30 days following the date of publication of this proposal in the *Texas Register*.

The University of Texas System

Administrative Rule Series: 22602

1. Title

Protest Procedures related to Procurements of Goods and Services

2. Rule and Regulation

Sec. 1 Protest Procedures. Any actual or prospective bidder, offeror, or proposer who is aggreived in connection with the solicitation, evaluation, or award of a contract by a U.T. System institution, including System Administration, may file a formal protest with the primary procurement officer of the procuring institution. Such protests must be in writing and received in the primary procurement officer's office within 10 working days after such aggrieved person knows, or should have known, of the occurrence of the act or omission being protested.

Sec. 2 Written Determination to Proceed. If a protest meeting the requirements of these procedures is timely received, the institution shall not proceed further with the solicitation or with the award of a contract unless the chief business officer of the institution, after consultation with the using department and the primary procurement officer, makes a written determination that it is necessary to proceed with the solicitation or award a contract without delay to protect the best interests of the institution.

Sec. 3 Formal Protest. A formal protest must contain:

3.1 a specific identification of the statutory or regulatory provision(s) that the act or omission being complained of is alleged to have violated;

3.2 a specific description of each act or omission alleged to be in violation of the statutory or regulatory provision(s) identified in Section 3.1;

3.3 a statement of the relevant facts;

3.4 an identification of the issue or issues to be resolved; and

3.5 argument and authorities in support of the protest.

Sec. 4 Primary Procurement Officer Review. The primary procurement officer shall attempt to settle and resolve the protest concerning the solicitation or award of a contract, prior to appeal to the institution's chief business officer. The primary procurement officer may request additional information from the protesting party and the using department to help in the evaluation and resolution of the protest.

Sec. 5 Written Determination. If the protest is not resolved by mutual agreement, the primary procurement officer will issue a written determination on the protest.

5.1 If the primary procurement officer determines that no violation of rules or statutes has occurred, the primary procurement officer shall inform the protesting party and the using department by letter that sets forth the reasons for the determination.

5.2 If the primary procurement officer determines that a violation of the rules or statutes has occurred in a case where a contract has not been awarded, the primary procurement officer shall inform the protesting party and the using department by letter that sets forth the reasons for the determination and the appropriate remedial action.

5.3 If the primary procurement officer determines that a violation of the rules or statutes has occurred in a case where a contract has been awarded, the primary procurement officer shall inform the protesting party and the using department by letter that sets forth the reasons for the determination and the appropriate remedial action, which may include ordering the contract void.

Sec. 6 Appeal. The primary procurement officer's determination regarding a protest may be appealed by the protesting party to the institution's chief business officer. An appeal of the primary procurement officer's determination must be in writing and must be received in the office of the chief business officer no later than 10 calendar days after the date of the primary procurement officer's determination.

Sec. 7 Timely Filing of Protest and Appeal. Unless good cause for delay is shown or the chief business officer determines that a protest or appeal raises issues significant to procurement practices or procedures, a protest or appeal that is not filed timely will not be considered.

Sec. 8 Appeal Final. An appeal to the chief business officer shall be limited to review of the primary procurement officer's written determination of the protest. A decision issued in writing by the chief business officer shall be final.

Sec. 9 Record Retention. All documents related to protests filed with an institution will be retained in accordance with that institution's records retention policy.

3. Definitions

None

4. Relevant Federal and State Statutes

Texas Government Code, §2155.076 - Protest Procedures

5. Relevant System Policies, Procedures, and Forms

None

6. Who Should Know

Administrators

7. System Administration Office(s) Responsible for Rule

Office of Business Affairs

8. Dates Approved or Amended

_____, 2006

9. Contact Information

Questions or comments regarding this rule should be directed to: bor@utsystem.edu

Filed with the Office of the Secretary of State on July 28, 2006.

Francie Frederick, Counsel and Secretary to the Board, Office of the Board of Regents

Earliest possible date of adoption: September 4, 2006

For further information, please call Dana Hollingsworth: (512) 499-4475

TRD-200603961
Francie A. Frederick
Counsel and Secretary to the Board
The University of Texas System
Filed: July 28, 2006

♦ ♦ ♦

How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 30 (2005) is cited as follows: 30 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 21, April 15, July 8, and October 7, 2005). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).